IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 10th OF FEBRUARY, 2023

MISC. PETITION No. 807 of 2023

BETWEEN:-

VIKRAJ SINGH S/O SHRI INDRAMANI PRASAD PATEL, AGED ABOUT 29 YEARS, OCCUPATION: FARMER /STUDENT R/O VILLAGE POST RITHI P.S CITY KOTWALI TEHSIL GURH (MADHYA PRADESH)

.....PETITIONER

(BY SHRI BRIJENDRA KUMAR MISHRA, ADVOCATE)

AND

1. **RAMKRIPAL PATEL S/O SHRI BHOLA @ BHAROSA PATEL, AGED ABOUT 74 YEARS, OCCUPATION: FARMER R/O VILLAGE POST RITHI P.S CITY KOTWALI TEHSIL GURH (MADHYA PRADESH)**

2. **RADHE LAL PATEL S/O LATE SHRI RAMKRIPAL PATEL, AGED ABOUT 72 YEARS, OCCUPATION: FARMER R/O VILLAGE / POST RITHI POLICE STATION CITY KOTWALI TEHSIL GURH DISTRICT (MADHYA PRADESH)**

3. **CHANDRAWATI PATEL W/O LATE SHRI KANHAIYALAL PATEL, AGED ABOUT 52 YEARS, OCCUPATION: FARMER R/O VILLAGE / POST RITHI POLICE STATION CITY KOTWALI TEHSIL GURH DISTRICT (MADHYA PRADESH)**

4. **UDAYBHAN PATEL S/O LATE SHRI KANHAIYALAL PATEL, AGED ABOUT 24 YEARS, OCCUPATION: FARMER R/O VILLAGE / POST RITHI POLICE STATION CITY KOTWALI TEHSIL GURH DISTRICT (MADHYA PRADESH)**

5. **KU. REETU PATEL D/O LATE SHRI KANHAIYALAL PATEL, AGED ABOUT 20 YEARS, OCCUPATION: FARMER R/O VILLAGE / POST RITHI POLICE STATION CITY KOTWALI TEHSIL GURH DISTRICT (MADHYA PRADESH)**

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6. STATE OF MADHYA PRADESH THROUGH COLLECTOR REWA DISTRICT (MADHYA PRADESH)

.....RESPONDENTS

(BY MS. KAMLESH TAMRAKAR, PANEL LAWYER FOR RESPONDENT-STATE)

This petition coming on for admission this day, the court passed the following:

ORDER

This miscellaneous petition has been preferred by the plaintiff challenging the order dated 28.01.2023 passed by 8th District Judge, Rewa in MCA No.114/2019 affirming the order dated 30.09.2019 passed by 4th Civil Judge Class-II, Rewa in Civil Suit No.80-A/2019 whereby learned Courts below have dismissed the application under Order 39 Rule 1 & 2 CPC filed by the plaintiff.

Learned counsel for the petitioner/plaintiff submits that learned both the Courts below have erred in dismissing the application under Order 39 Rule 1 & 2 CPC and from the material available on record, it is clear that the plaintiff is owner/bhoomiswami of the land in question and the defendant 1 has no title over the land in question but in collusion with the defendants 2-5, he has encroached upon the land owned by the plaintiff. He submits that the impugned orders are not sustainable and this petition deserves to be allowed.

Heard learned counsel for the petitioner and perused the record.

Learned Courts below have after due consideration of the material available on the record held that primafacie the plaintiff has not been able to prove his title in the suit, which has been filed for declaration of title, restoration of possession and permanent injunction. As such, admittedly the defendant 1 or the defendants 2-5 are in possession of the land in question.

So far as the primafacie case is concerned, as the plaintiff has failed to

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place any document of title and even before this Court also no document of title has been filed by the plaintiff/petitioner, as such, this Court does not find any illegality in the impugned orders passed by learned Courts below.

Learned counsel for the petitioner further submits that the civil suit is at the stage of final arguments, which is also clear from the order dated 12.12.2022 (Annexure P/4), therefore, it is directed that if the civil suit is at the stage of final arguments, then learned trial Court shall take every endeavour to decide the pending civil suit within a further period of three months from the date of receipt of copy of order passed by this Court.

However, declining interference but with the aforesaid observation, this **miscellaneous petition is disposed off.**

Interim application(s), if any, shall stand disposed off.

(DWARKA DHISH BANSAL)
JUDGE

Pallavi

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