IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 14th OF JUNE, 2023

MISCELLANEOUS PETITION No. 808 of 2022

BETWEEN:-

SMT. JAISHREE AGRAWAL W/O GOPAL KRISHNA AGARWAL, AGED ABOUT 64 YEARS, OCCUPATION: NIL R/O AKASH GANGA COLONY RAHTANI PUNE MAHARASHTRA (MAHARASHTRA)

.....PETITIONER

(BY SHRI AMIT KHATRI - ADVOCATE)

AND

1. **SMT. ARCHANA SISODIYA S/O KULDEEP SINGH SISODIYA, AGED ABOUT 51 YEARS, OCCUPATION: NIL R/O KANCHAN VIHAR LAMTI JABALPUR AND OTHERS (MADHYA PRADESH)**

2. **MUNICIPAL CORPORATION THROUGH COMMISSIONER JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI YOGENDRA GOLANDAZ - ADVOCATE FOR THE RESPONDENT NO.1 AND SHRI AMAN PANDEY - ADVOCATE FOR RESPONDENT NO.2)

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

ORDER

This petition is filed by the defendant before the trial Court being aggrieved of order dated 31.01.2022 (Annexure P-2) passed by the learned Third District Judge, Jabalpur in MCA No.60/2021.

Petitioner's contention is that plaintiff Smt. Archana Sisodiya filed suit registered as Civil Suit No.431A/2020 before the learned 11th Civil Judge,

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Class-II, Jabalpur (M.P.). Vide order dated 10.03.2021 an injunction was granted in favour of the plaintiff.

Petitioner's case is that plaintiff is an encroacher over the land of the present petitioner and this fact is borne out from the order dated 06.06.2016 passed by the Tehsildar, Jabalpur. Despite order of Tehsildar, Jabalpur, wherein it is specifically held that plaintiff has constructed a Barat Ghar on 7000 square feet of land received by her as a gift from her mother Smt. Rama Rathore but has encroached on 5000 square feet of land for parking by constructing a shed and therefore, she is in possession of the land more than the portion which was gifted to her by her mother.

It is pointed out by Shri Amit Khatri that gift deed is dated 24.10.1990, whereas in the year 1991, petitioner's mother-in-law had purchased land measuring 16000 square feet from Smt. Rama Rathore. This land was jointly purchased by petitioner's mother-in-law Smt. Shanti Devi and one Smt. Kusum Gupta. They had affected mutual partition on 27.03.1991 when 5000 square feet of land was kept by Smt. Kusum Gupta and 11000 square feet land was given to Smt. Shanti Devi.

When petitioner wanted to construct over 11000 square feet of her land then it was revealed that there was encroachment to the extent of about 5000 square feet land by the plaintiff. Overlooking these facts and categorical order of the Tehsildar which has admittedly not been stayed by any superior revenue Court, learned trial Court on the basis of old established possession has granted injunction.

This order has been maintained by the first appellate Court. There are contesting issues involved in the suit. Prima facie it appears that petitioner's land has been encroached by the plaintiff, inasmuch as, there is a demarcation report

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in favour of the petitioner. Tehsildar has clearly mentioned that the land situated in Khasra No.37/2 that is that of the petitioner measuring 0.147 hectares has been encroached by the plaintiff to the extent of 4990 square feet from which plaintiff is to be dispossessed but taking this fact that since parties are in possession for some time, and if that possession is illegal, then the trial Court is required to take all these facts into consideration and decide the matter.

Shri Amit Khatri, at this stage, submits that counter claim was filed in January, 2022. Till date trial Court has not framed any issue. It is surprising that why trial Court is delaying the matter.

Trial Court is directed that it shall frame issues within seven days of receipt of certified copy of the order being passed today. It will fix a date of not more than 7 days for settlement of issues and, thereafter, once issues are settled, then shall give opportunity of leading evidence to the plaintiff and defendant by fixing dates which shall not be at an interval of more than 7 days so that evidence of the parties is completed within further period of two months at best and, thereafter, shall decide the suit within a further period of one month i.e. within period of three months from the date of communication of this order, trial Court shall decide the suit on its own merits

With the aforesaid, this miscellaneous petition is disposed of.

It is made clear that none of the parties shall be afforded any undue adjournment and if adjournment is necessary, it should be given only by imposing heavy cost.

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(VIVEK AGARWAL)
JUDGE

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