

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 317 of 2021

1. Sudhir Gupta, S/o Late Shankar Lal Gupta, Aged About 56 Years, R/o Infront of City Club Station Road, Durg, Tahsil and District-Durg (Chhattisgarh).
2. Jyoti Gupta, D/o Late Shankar Lal Gupta Aged About 50 Years R/o Infront Of City Club Station Road, Durg, Tahsil and District - Durg (Chhattisgarh).
3. Smt. Sibbo Gupta, D/o Late Shankar Lal Gupta, Aged About 42 Years, R/o Infront of City Club Station Road, Durg, Tahsil and District - Durg (Chhattisgarh) (Note - Plaintiff No.-2 Smt. Sandhya Gupta Died On 12-02-2021 As Such She Has Not Been Made Party As Petitioner)

---- Petitioners

Versus

1. Jayesh Yadav, S/o Late Radhe Raman Yadav, Aged About 46 Years, R/o Panchsheel Colony, Behind Collectorate, Ward No. 41, Chhindwada, Tahsil And District - Chhindwada (Madhya Pradesh) - Pin – 480001.
2. Ashish Yadav, S/o Late Radhe Raman Yadav, Aged About 42 Years, R/o Panchsheel Colony, Behind Collectorate, Ward No. 41, Chhindwada, Tahsil And District - Chhindwada (Madhya Pradesh) - Pin – 480001.
3. Preeti Jabalpure, D/o Late Radhe Raman Yadav, Aged About 44 Years, R/o Ambaji Road, Bhau Saheb Survey Nagar, Nagpur (Maharashtra), District : Nagpur, Maharashtra.

---- Respondents

For Applicant : Mr. P.R. Patankar, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

13/07/2021

1. Petition has been brought being aggrieved with the judgment dated 11.2.2021 and 19.3.2021 passed in Civil Suit No.72A/2013 by learned trial Court dismissing the application under Order 1 Rule 10 CPC and the application under Order 6 Rule 17 of CPC.

2. It is submitted by the counsel for the petitioner that on the petition W.P. (227) No.867/2019 filed by the petitioners, the earlier order of rejection by the trial Court under Order 1 Rule 10 of CPC and order 6 Rule 17 of CPC was considered in order dated 21.11.2019, in which, it was held that there is an interest claimed by Arya Pratinidhi Sabha on the subject of the matter of civil suit, therefore, the trial Court should be apprised of the same and the application under Order 1 Rule 10 and under Order 6 Rule 17 of CPC be decided afresh.
3. It is also submitted that the respondents had separately filed an execution case against Arya Pratinidhi Sabha for execution of decree in Civil Suit No.5A/2003, in which, the Arya Pratinidhi Sabha has raised objection on the executability of decree regarding which the order passed in Execution Case dated 21.7.2014 was challenged in W.P.227 No.649/2014, which has been disposed off vide order dated 29.11.2014, therefore, it clearly shows that the Arya Pratinidhi Sabha have interest in the suit property and, therefore, they are necessary party in the present civil suit, hence, for this reason, the application for impleading additional parties and also for amendment should have been allowed by the learned trial Court and by not doing so error has been committed, hence, this petition be admitted for hearing.
4. Considered on the submissions and perused the documents filed along with the petition. The facts of the case appear to be this, that an agreement to sale was made between Shankar Lal Gupta, the father of the petitioners and Snehlata Yadav on 26.6.2004. On the date of agreement, the suit property was under dispute and regarding the same a civil suit No.5A/2003 was pending between the parties Snehlata Yadav and the Arya Pratinidhi Sabha. By a compromise decree dated 14.8.2005, the suit was decreed in favor of Smt. Snehlata Yadav. According to which, the suit property was to be transferred by Arya Pratinidhi Sabha to Snehlata Yadav. Thus, property has not been transferred till date and, therefore, the execution of the same is pending, irrespective of that a civil suit has also been filed by the petitioners praying for specific performance of contract dated 26.6.2004.
5. The issue involved in this case is complicated, however, it is clear that the civil suit that has been filed by the petitioner is purely on the basis

of contract for the relief of specific performance of contract. Such a suit can be filed only between the parties to the contract. The learned trial Court has held in the impugned orders, that according to the judgment of Orissa High Court in the case of **Kesaba Behera v. Chinari Swapnarani Subudhi and another**, in the Laws(Orissa) 2019 page 17 and the judgment of **M.P. High Court in Dinesh Bhargava v. Sheetal Rathore**, in 2021 part-1 M.P. Weekly Notes-32, the third parties cannot be made party in the suit for specific performance and on that basis the applications for impleading additional parties and the application for amendment has been rejected.

6. In the order of this Court in W.P.(227) No.867/2019 dated 21.11.2019, this Court had not expressed any view on the application for impleading additional parties and the application for amendment. The only thing, that was taken notice of was that the Arya Pratinidhi Sabha has some interest in the same subject matter of the civil suit which should also be taken into consideration before disposing off the application and, thus, it was directed that this should also be taken notice of before disposing of the applications under Order 1 Rule 10 CPC and order 6 Rule 17 of CPC. The learned trial Court has taken notice of this fact and clearly held that the Arya Pratinidhi Sabha is a third party in the contract and therefore has rejected the applications. This Court is also of this view, that the civil suit filed by the petitioners is purely based on the contract dated 26.6.2004, therefore, the parties in such a suit shall only be the persons, who are the parties to contract, hence, I find no substance in the present petition, which is dismissed and disposed off at motion stage.
7. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge