

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV

ON THE 1st OF FEBRUARY, 2024

MISC. PETITION No. 481 of 2024

BETWEEN:-

**SURESH CHANDRA AGARWAL S/O SHRI NARAYAN DAS
AGRAWAL, AGED 60 YEARS, R/O SADAR BAZAR
MORAR GWALIOR AT PRESENT R/O KOTWALI
SANTAR PARGANA MORAR DISTRICT GWALIOR
(MADHYA PRADESH)**

.....PETITIONER

(SANJAY KUMAR MISHRA - ADVOCATE)

AND

- 1. NARAYAN DAS AGARWAL S/O LATE SHRI
MITTHAL LAL AGARWAL, AGED ABOUT 90
YEARS, AHEAD OF GUPTA NURSING HOME
NAGAR NIGAM COLONY NARAYAN DAS
TRADING COMPANY KIRANE KI DUKAN MORAR
GWALIOR MP (MADHYA PRADESH)**
- 2. RAJESH AGARWAL S/O SHRI NARAYAN DAS
AGARWAL, AGED ABOUT 62 YEARS, R/O AHEAD
OF GUPTA NURSING HOME, NAGAR NIGAM
COLONY, NARAYAN DAS TRADING COMPANY,
KIRANE KI DUKAN, MORAR, GWALIOR (MADHYA
PRADESH)**
- 3. SMT KIRANLATA SARAF D/O SHRI NARAYAN DAS
AGARWAL W/O SHRI OMPRAKASH SARAF, AGED
ABOUT 67 YEARS, R/O A-24, BEHIND STATE BANK
OF INDIA, TANSEN NAGAR, GWALIOR (MADHYA
PRADESH)**
- 4. SMT RENU AGARWAL D/O SHRI NARAYAN DAS
AGARWAL, AGED ABOUT 59 YEARS, R/O 981 CP
MISSION COMPOUND, JAR PAHAD, JHANSI
(UTTAR PRADESH)**
- 5. SMT BABITA GARG D/O SHRI NARAYAN DAS**

2
AGARWAL W/O SHRI RAVINDRA GARG, AGED
ABOUT 53 YEARS, R/O 39 RADHIKA VIHAR NEAR
KARMYOGI FOUNDATION, KAMLA NAGAR, AGRA
(UTTAR PRADESH)

.....RESPONDENTS

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

ORDER

1. Invoking jurisdiction under Article 227 of the Constitution, petitioner filed this petition challenging the order dated 07.11.2023 passed by 10th Civil Judge, Junior Division, Gwalior rejecting the application of the plaintiff/petitioner under Section 151 of Cr.P.C.

Heard learned counsel for the petitioner.

2. Submissions of learned counsel for petitioner are as under:-

(i) Property belongs to the forefather of the petitioner and respondents. Grandfather had purchased the property in the name of respondent No.1. Respondent No.1 admitted the said fact in Civil Suit No.419-A/1964.

(ii) Petitioner has 1/6 share in the property being an ancestral property.

(iii) Petitioner/plaintiff has filed a suit for declaration along with application under Order 39 Rule 1 and 2 of the CPC on 23.08.2023 which is still pending.

(iv) Before finalization of the said application, petitioner filed another application under Section 151 of the Cr.P.C. for the same relief because respondents have not filed reply against the said application.

(v). Learned court below while rejecting the application under Section 151 of the Cr.P.C. took a contrary view and dismissed the application of the petitioner saying that before disposal of ad-interim injunction, no order of stay

can be passed because purpose of ad-interim application would fail.

4. Facts as depicted in the record are that petitioner/plaintiff Suresh Chandra Agrawal filed a suit against his father Narayan Das Agrawal, his brother Rajesh Agrawal, his mother Smt. Kiranlata Saraf her two daughters, namely, Smt. Renu Agrawal and Smt. Babita Agrawal for injunction and declaration of the property. In the suit, prayer made by the petitioner is read as under:-

अ—यहकि, यह घोषित किया जावे कि वादग्रस्त भवन स्थित सदर बाजार मुरार जिला ग्वालियर जिसे वाद पत्र के साथ संलग्न मानचित्र में लाल रंग की रेखाओं से उल्लेखित किया गया है जिसका कुल क्षेत्रफल 1000 (एक हजार) वर्गफुट जिसकी चतुर्सीमा पूर्व में—पतली गली उपरान्त मकान गुप्ता जी का, पश्चिम में— आम रास्ता सरकारी, उत्तर में— मकान महेश, राकेश अग्रवाल का, दक्षिण में—मकान श्रीमती विमला देवी, रामबाबू गुप्ता का होकर जिसका भवन क्रमांक—1221 (एक हजार दो सौ इक्कीस) वार्ड क्रमांक —27 (सत्ताईस) नगर निगम सम्पत्ति आई.डी. क्रमांक—1000292566 होकर जो वाद एवं प्रतिवादीगण का पुस्तैनी भवन है जिसमें वादी 1/6 (एक बटा छः) समान हिस्से का स्वामी व आधिपत्यधारी है।

ब— यहकि, वादी के हक में प्रतिवादीगण के विरुद्ध एक आशय की स्थाई निषेधाज्ञा प्रचलित की जावे कि प्रतिवादीगण बगैर वैधानिक बंटवारे के वादग्रस्त भवन को अंतरित व विक्रय न करें तथा वादग्रस्त भवन में किसी भी तरह का कोई निर्माण कार्य न करें न किसी अन्य से करावे।

5. Main Submission of learned counsel for petitioner is that without partition of the parental property, respondents, who are father, mother, brother and sisters of the plaintiff himself, are encroaching the property and they are creating hindrance in the peaceful possession of the plaintiff/petitioner. Respondents started raising construction over the property without waiting for the disposal of the application filed under Section Order 39 Rule 1 and 2 of the CPC and they want to dispossess the plaintiff/petitioner.

6. Admittedly, the property is an ancestral property and was purchased by the grandfather of the petitioner in the name of respondent No.1. Petitioner

may have the share in the said property by virtue of his birth but property is not divided till today. Plaintiff has claimed to be co-owner of the property but it cannot be said that in which specific portion of the property, petitioner is in possession. It is an admitted position of the matter that application under Order 39 Rule 1 and 2 is still pending and during the pendency of that application, an application under Section 151 of the Cr.P.C. has been filed by the plaintiff/petitioner.

6. Court below has written in its finding that contrary pleadings have been made by both the parties in respect of ownership of the property and any determination may be done only on the basis of merits and it is well settled law that in a joint property, nobody can be restrained from interfering or using the property without any division. Court below has further recorded that before disposal of the application filed under Order 39 Rule 1 and 2 of the CPC, no order of *status quo* can be passed.

7. Application under Order 39 Rule 1 and 2 is still pending, in view of the above, I do not find any illegality or irregularity warranting interference in the order.

8. Petition stands **dismissed** accordingly.

(RAJENDRA KUMAR-IV)
JUDGE

Vishal