IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 2nd OF FEBRUARY, 2024

MISC. PETITION No. 3693 of 2023

BETWEEN:-

AJAY S/O SHRI BENIPRASADJI VERMA, AGED ABOUT 64 YEARS, OCCUPATION: BUSINESS 122 PALSIKAR COLONY DISTRICT INDORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI NIPUN CHOUDHARY - ADVOCATE)

AND

1. **SHRIMANT MAHARANI USHADEVI OF INDORE DWARA SACHIV THIKANA MANIKBAG DISTRICT INDORE (MADHYA PRADESH)**

2. **SMT. USHADEVI W/O SATISH CHANDRA MALHOTRA, AGED ABOUT 72 YEARS, OCCUPATION: SUKH VASTU WIND MAYOR KAFRED KOLABA MUMBAI MAHARASTHRA (MAHARASHTRA)**

3. **SUKHDEV SINGH S/O SACHHASINGH GHUMAN, AGED ABOUT 54 YEARS, OCCUPATION: BUSINESS 223, VISHNUPURI ANNEX INDORE (MADHYA PRADESH)**

4. **MADHYA PRADESH SASAN DWARA JILADISH INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.4 BY SHRI TARUN PAGARE - PANEL LAWYER. NONE FOR THE RESPONDENT NO.2 THOUGH SERVED)

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

ORDER

1. This petition under Article 227 of the Constitution of India has been

Signature Not Verified
Signed by: SHAILESH MAHADEV SUKHDEVE
Signing time: 03-02-2024 15:11:25

preferred by the plaintiff/petitioner against the order dated 21.06.2023 passed in Civil Suit No.900009/2014 by the 7th District Judge, District Indore, whereby an application under Order 6 Rule 17 of the CPC for amendment of the plaint and under Order 1 Rule 10 of the CPC for impleading one Subhash as a defendant to the suit has been rejected.

2. In the aforesaid application filed by the plaintiff he had categorically made an averment to the effect that he has obtained the copies of the Khasra Panchshala with respect to the suit land from the office of the Tehsildar upon which he has acquired knowledge that the same is recorded in the name of one Subhash. Certain other entries were also found by him to be made therein. Since Subhash is recorded over the said land he is a necessary party to the suit and it is imperative for the plaintiff to make necessary amendments in the plaint in that regard.

3. Application preferred by the plaintiff has primarily been rejected by the trial Court on the ground of delay and on the ground that no document has been produced by plaintiff in support of the averments made by him in the application.

4. A perusal of the proceedings of the trial Court shows that the evidence of plaintiff has not yet begun and the case has now been fixed for recording of his evidence. Thus mere pendency of the suit since the year 2008 would not be material. The claim is of plaintiff and there is no reason for him to delay the proceedings of his own case. In any case for the delay in making the application the defendants could have been compensated by cost.

5. The observation of the trial Court that documents have not been filed by plaintiff in support of his applications is misconceived as that would be a matter of evidence and at the stage of consideration of an application under

Signature Not Verified
Signed by: SHAILESH MAHADEV SUKHDEVE
Signing time: 03-02-2024 15:11:25

Order 6 Rule 17 of the CPC it is only the averments which are required to be considered and it has to be further considered whether they are necessary for a just and proper decision of the dispute raised between the parties.

6. From a perusal of the application filed by the plaintiff it appears that the proposed amendments are necessary for a complete adjudication of the dispute between the parties. Since one Subhash is recorded over the suit land, for an effective decree to be passed his impleadment is necessary. Under Order 1 Rule 10 of the CPC a necessary party can be impleaded at any time even in an appeal thus rejection of the said application on the ground of delay is erroneous.

7. As a result the impugned order passed by the trial Court cannot be sustained and is hereby set aside. The application under Order 6 Rule 17 of the CPC read with Order 1 Rule 10 of the CPC filed by plaintiff stands allowed subject to payment of cost of Rs.2,500/- by the plaintiff to the defendants before the trial Court on the next date of hearing.

8. Petition is accordingly allowed and disposed off.

(PRANAY VERMA)
JUDGE

ns

Signature Not Verified
Signed by: SHAILESH MAHADEV SUKHDEVE
Signing time: 03-02-2024 15:11:25