

HIGH COURT OF MADHYA PRADESH

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MP No.4862/2021

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 28th OF FEBRUARY, 2022

MISC. PETITION No. 4862 of 2021

Between:-

- DINESHCHANDRA S/O BHUWANISHANKAR , AGED ABOUT**
1. **54 YEARS, OCCUPATION: AGRICULTURE GRAM DHALPAT, TEHSIL SUWASARA (MADHYA PRADESH)**
PRABHULAL S/O BHUWANISHANKAR , AGED ABOUT 68
2. **YEARS, OCCUPATION: AGRICULTURE GRAM DHALPAT, TEHSIL SUWASARA (MADHYA PRADESH)**
MAHESH S/O PRABHULAL OCCUPATION: AGRICULTURE
3. **GRAM DHALPAT, TEHSIL SUWASARA (MADHYA PRADESH)**
AANAND S/O DINESHCHANDRA OCCUPATION:
4. **AGRICULTURE GRAM DHALPAT TEHSIL SUWASARA DIST MANDSAUR (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI Rajeev Kumar Jain Adv.)

AND

1. **GANPAT S/O RAMA GRAM DHAMNIYA, TEHSIL SUWASARA (MADHYA PRADESH)**
2. **STATE OF MADHYA PRADESH THROUGH COLLECTOR MANDSAUR (MADHYA PRADESH)**

.....RESPONDENTS

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

Heard on admission.

ORDER

1/ Petitioners have filed the present petition under Article 227 of the Constitution of India being aggrieved by the impugned order dated 28.9.2021 passed by the Civil Judge, Senior Division, Sitamau, District Mandsaur in Civil Suit No.69-A/2021, whereby an application under Order 7 Rule 11 read

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with Section 151 of CPC filed by the petitioner/defendant has been dismissed.

2/ Brief facts of the case are that respondent/plaintiff had filed a civil suit No.261-A/1991 (Ganpat Vs. Sundar Bai and others) before the Civil Judge Class-II, Sitamau, in which respondent has filed the application for compromise and on that basis trial Court has dismissed the civil suit filed by the respondent. Then petitioner's mother had filed the Civil Suit No.269A/1991, wherein the petitioners and respondents had filed a compromise application. On the basis of the compromise, trial Court has disposed of the matter vide order dated 3.8.2002. Then again present suit has been filed.

3/ Learned counsel for the petitioner submits that court below has failed to appreciate that earlier suit between the parties was disposed of on the basis of compromise, therefore, subsequent civil suit is not maintainable between both the parties on the same subject matter as *res judicata*. Therefore, petitioners have filed an application under Order 7 Rule 11 of CPC, which has been rejected by the trial Court on erroneous grounds. The impugned order is bad in law and deserves to be set aside.

4/ Petitioners have filed the plaint of earlier civil suit and also subsequent civil suit. Earlier civil suit No.261-A/1991 was filed by the respondent/plaintiff Ganpat for permanent injunction. Per contra, the present suit has been filed for declaration of title, permanent injunction and for setting aside the impugned order dated 8.3.2021 passed by the Addl. Commissioner, Ujjain, therefore, subject matter in both the civil suits are totally different. Counsel for the petitioners has failed to point out any material irregularity or jurisdictional error in passing the impugned order. Hence, this Court does not find

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any proper reason to interfere in exercise of jurisdiction under Article 227 of the Constitution of India.

5/ Accordingly this miscellaneous petition is dismissed at motion stage.

C.C. as per rules.

**(Anil Verma)
Judge**

trilok/-

Digitally signed by TRILOK SINGH
SAVNER
Date: 2022.02.28 19:30:49 +05'30'

