

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**MISC. PETITION No. 1981 of 2021**

**BETWEEN:-**

**RAMESHWAR S/O SHRI KANHAIYALAL, AGED  
ABOUT 65 YEARS, OCCUPATION:  
AGRICULTURIST VILL-MANASA, TEH.  
BADNAWAR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI NITIN PHADKE, ADVOCATE )***

**AND**

- 1. KAPTANSINGH S/O SHRI RANVEERSINGH  
RAJPUT, AGED ABOUT 46 YEARS,  
OCCUPATION: AGRICULTURIST VILL-  
MANASA, TEH. BADNAWAR (MADHYA  
PRADESH)**
- 2. VISHAL S/O SHRI LAKHANSINGH RAJPUT,  
AGED ABOUT 30 YEARS, OCCUPATION:  
AGRICULTURIST VILLAGE MANASA,  
TEHSIL BADNAWAR DIST DHAR (MADHYA  
PRADESH)**
- 3. STATE OF MADHYA PRADESH THR  
COLLECTOR DHAR (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI D.S. PATEL, ADVOCATE FOR THE RESPONDENTS NO.1 & 2  
SHRI VAIBHAV BHAGWAT, GOVT. ADVOCATE FOR THE STATE)***

.....  
***Reserved on : 19/04/2023***

***Pronounced on :29/05/2023***

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

**ORDER**

1] This Miscellaneous Petition has been filed by the petitioner/plaintiff under Article 227 of the Constitution of India against the order dated 03.04.2021, passed by the Civil Judge, Class-II, Badnawar, District-Dhar (M.P.) in Civil Suit No.9-A/2020, whereby, the learned Judge of the trial Court has allowed the application filed by the respondents No.1 & 2 /Defendants under Order 6 Rule 17 read with Section 151 of the CPC for amendment in the counter claim, as also the application filed under Order 1 Rule 10 of the CPC for impleading the parties.

2] In brief, the facts of the case are that the plaintiff has filed a suit for declaration and permanent injunction in respect of the suit land against the respondents No.1 & 2, in which, the counter claim was also filed by the respondents/defendants along with their written statement. However, subsequently, the defendant has also filed an application under Order 6 Rule 17 of the CPC and another application under Order 1 Rule 10 of the CPC on 18.12.2020, contending that after the plaintiff filed the reply to the counter claim, they came to know that the disputed property has been sold by them in the year 2004 to other parties and, thus, the amendment in respect of the aforesaid pleadings have been sought and the persons, to whom the plaintiff has sold the land were also sought to be added by way of a

separate application under Order 1 Rule 10 of the CPC. The aforesaid applications were allowed by the trial court holding that the parties are necessary parties to be the suit.

3] Counsel for the petitioner has submitted that the aforesaid order is liable to be set aside on the ground that while allowing the application under Order 1 Rule 10 of the CPC, the learned Judge of the trial Court has entered into tripartite contest, which is not permissible as has been held by this Court in the case of **Nandlal and others vs. State of M.P. and another** reported as **2014 (II) MPWN 64** and in the case of **Deepak Agrawal vs. Ramweeer Singh (Dau)** passed in **W.P. No.4320 of 2012** vide order dated 02.12.2015, wherein, this Court has held that the addition of a party resulting in triangular fight cannot be allowed.

4] Counsel for the respondents No.1 & 2 has opposed the prayer and it is submitted that in the present case, the counter claim has been sought to be amended on the basis of the pleadings made by the plaintiff/petitioner in their reply to the counter claim, and since the plaintiff had already sold the land to other parties, which land was also sold to the defendant in the year 1993, hence, the subsequent purchaser of the property are also the necessary party. And, thus, learned Judge of the trial court has not erred in allowing both the applications.

5] In support of his submissions, counsel for the respondents has relied upon the decision rendered by the Madras High Court (Madurai

Bench) in the case of *A.V. Murugan vs. K. Maheswari* {C.R.P. No.42 of 2012; M.P.No.1 of 2012 decided on 12.09.2019}

6] Heard the counsel for the parties and also perused the record.

7] On perusal of the record it is found that the plaintiff has filed the suit for declaration and injunction in respect of the disputed property situated at Gram Manasa, Tehsil Badnawar, District Dhar. In the counter claim, the defendants claim is that the said entire properties have already been sold to him by the plaintiff in the year 1993 through a registered sale deed, thus, the defendants are also seeking declaration and injunction in respect of the same lands.

8] It is also found that in their written statement to the counterclaim, the plaintiff disclosed for the first time that he has already sold a parts of the suit land to the other persons in the year 2004 through registered sale deeds, which led the defendants to seek amendment in the counterclaim to seek cancellation of the sale deeds executed by the plaintiff in favour of the other persons, and thus, such other persons were also sought to be impleaded in the suit as the party defendants.

9] In the considered opinion of this court, the amendment sought by the defendants in the counterclaim, as also the application filed by them for impleading the other defendants in the plaint cannot be said to be unjustified. Once the defendants have filed a counter claim, for all the practical purposes, it is a suit filed by them against the plaintiff and are the *dominus litis* of the counter claim, and if the plaintiff

comes out with such a plea which requires amendment in the counterclaim and impleadment of co-defendants who are also the necessary parties to the lis already pending between the plaintiff and the defendants, such applications for amendment and impleadment are the necessary parts of litigation between the parties and cannot be avoided merely because some third party is also being added in the plaint as a party defendants leading to a triangular contest.

10] So far as the decisions relied upon by the petitioner, viz., *Nandlal and others vs. State of M.P. and another* reported as 2014 (II) MPWN 64 and *Deepak Agrawal vs. Ramveer Singh (Dau)* passed in *W.P. No.4320 of 2012* vide order dated 02.12.2015 are concerned, they are distinguishable on facts as in these cases, the application under Order 1 Rule 10 of CPC was filed by the defendants who had not filed the counter claims and this court has rightly held that plaintiff being the *dominus litis* cannot be forced into a triangular fight.

11] As a result, the petition being devoid of merits is hereby **dismissed** as no illegality or jurisdictional error has been committed by the learned Judge of the trial court in passing the impugned orders.

12] Learned judge of the trial court is requested to expedite the matter.

No costs.

( SUBHODH ABHYANKAR )  
JUDGE

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Digitally signed by MONI RAJU  
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