

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 31st OF OCTOBER, 2023

MISC. PETITION No. 5931 of 2023

BETWEEN:-

**SARAS GOSWAMI S/O SHRI SUNEEL KUMAR
GOSWAMI, R/O. MUHUTTAMKAR MANDIR SHRI
DEV JANKI RAMAN BANKE BIHARI MANDIR
GURU GOVIND SINGH WARD, TEHSIL AND
DISTRICT SAGAR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI RAKESH KUMAR KESHARWANI - ADVOCATE)

AND

- 1. JIYALAL S/O LATE MOHANLAL PATEL,
AGED ABOUT 68 YEARS, OCCUPATION:
NOT KNOWN, R/O. VILLAGE MADIYA
KABULA VITHHAL NAGAR WARD SAGAR
TEHSIL AND DISTRICT SAGAR (MADHYA
PRADESH)**
- 2. LAKHAN S/O LATE MOHANLAL PATEL,
AGED ABOUT 67 YEARS, R/O VILLAGE
MADIYA KABULA VITHHAL NAGAR WARD
SAGAR TEHSIL AND DISTRICT SAGAR
(MADHYA PRADESH)**
- 3. IMRAT S/O LATE MOHANLAL PATEL,
AGED ABOUT 68 YEARS, R/O. VILLAGE
MADIYA KABULA VITHHAL NAGAR WARD
SAGAR, TEHSIL AND DISTRICT SAGAR
(MADHYA PRADESH)**
- 4. NARMADA S/O LATE MOHANLAL PATEL,
AGED ABOUT 63 YEARS, R/O. VILLAGE
MADIYA KABULA VITHHAL NAGAR WARD
SAGAR, TEHSIL AND DISTRICT SAGAR**

(MADHYA PRADESH)

5. **GOVIND S/O LATE MOHANLAL PATEL, AGED ABOUT 60 YEARS, R/O. VILLAGE MADIYA KABULA VITHHAL NAGAR WARD SAGAR TEHSIL AND DISTRICT SAGAR (MADHYA PRADESH)**
6. **VEERENDRA S/O LATE POORANLAL PATEL, AGED ABOUT 55 YEARS, R/O. VILLAGE MADIYA KABULA VITHHAL NAGAR WARD SAGAR, TEHSIL AND DISTRICT SAGAR (MADHYA PRADESH)**
7. **SHIVRAJ S/O LATE POORANLAL PATEL R/O. VILLAGE MADIYA KABULA VITHHAL NAGAR WARD SAGAR, TEHSIL AND DISTRICT SAGAR (MADHYA PRADESH)**
8. **DEEPAK S/O LATE POORANLAL PATEL, AGED ABOUT 35 YEARS, R/O. VILLAGE MADIYA KABULA VITHHAL NAGAR WARD SAGAR, TEHSIL AND DISTRICT SAGAR (MADHYA PRADESH)**
9. **RAMSWAROOP S/O LATE DEENDAYAL PATEL, AGED ABOUT 40 YEARS, R/O. VILLAGE MADIYA KABULA VITHHAL NAGAR WARD SAGAR, TEHSIL AND DISTRICT SAGAR (MADHYA PRADESH)**
10. **MANOJ S/O LATE DEENDAYAL PATEL, AGED ABOUT 25 YEARS, R/O. VILLAGE MADIYA KABULA VITHHAL NAGAR WARD SAGAR TEHSIL AND DISTRICT SAGAR (MADHYA PRADESH)**
11. **DAYARAM S/O LATE JALAM PATEL, AGED ABOUT 70 YEARS, R/O VILLAGE MADIYA KABULA VITHHAL NAGAR WARD SAGAR, TEHSIL AND DISTRICT SAGAR (MADHYA PRADESH)**
12. **PRATAP S/O LATE JALAM PATEL, AGED ABOUT 68 YEARS, R/O. VILLAGE MADIYA KABULA VITHHAL NAGAR WARD SAGAR, TEHSIL AND DISTRICT SAGAR (MADHYA PRADESH)**

13. **MUNNALAL S/O. LATE JALAM PATEL, AGED ABOUT 60 YEARS, R/O. VILLAGE MADIYA KABULA VITHHAL NAGAR WARD SAGAR, TEHSIL AND DISTRICT SAGAR (MADHYA PRADESH)**
14. **SANMUKH S/O. LATE JALAM PATEL, AGED ABOUT 50 YEARS, R/O VILLAGE MADIYA KABULA VITHHAL NAGAR WARD SAGAR, TEHSIL AND DISTRICT SAGAR (MADHYA PRADESH)**
15. **THE COLLECTOR, COLLECTOR OFFICE SAGAR DISTRICT SAGAR M.P. MANAGER SHRI DEV JANKI RAMAN BANKE BIHARI MANDIR GURU GOVIND SING WARD, TEHSIL AND DISTRICT SAGAR (MADHYA PRADESH)**

.....RESPONDENTS

(NONE FOR RESPONDENTS NO. 1 TO 14 AND SMT. SWATI ASEEM GEORGE – DEPUTY GOVERNMENT ADVOCATE FOR RESPONDENT NO. 15 / STATE.)

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 filed against order dated 14.08.2023 passed by 8th Civil Judge, Junior Division, District Sagar (MP) in RCSA No.291/2022, by which application filed by the respondents / plaintiffs under Order 6 Rule 17 of CPC has been allowed and amendment proposed by the respondents / plaintiffs in plaint has been permitted to be incorporated.
2. Challenging the order passed by the Trial Court, it is submitted by counsel for the petitioner that the plaintiffs / respondents have filed a suit for possession as well as for permanent injunction.

The petitioner has also filed his written statement. Thereafter, the plaintiffs filed an application under Order 6 Rule 17 of CPC claiming that they are in possession of the land-in-dispute for last more than 100 years and, therefore; they have acquired rights being Maurushi cultivator. The application was opposed by the defendant / petitioner. However, by the impugned order dated 14.08.2023 the application has been allowed and the amendment proposed by the plaintiffs has been directed to be incorporated with liberty to the petitioner / defendants that if he so desires, then he may carry out consequential amendment.

3. It is submitted that not only the amendment application filed by the respondents / plaintiffs was delayed but it will change very nature of the suit.
4. None for the respondents.
5. Considered the submissions made by counsel for the petitioner.
6. The Civil suit was filed on 17.10.2022 whereas the application for amendment in the plaint was filed on 28.6.2023. The civil suit is at the initial stage. The original suit of the petitioner is based on adverse possession by claiming that the plaintiffs are in possession of the land-in-dispute for last more than 100 years. Even by incorporating amendment, the plaintiffs have merely claimed that by virtue of their possession for last more than 100 years, they became Maurushi cultivator and thus, acquired the title of possession. Thus, basic ground for filing the civil suit is possession for last more than 100 years. By the amendment incorporated by the plaintiffs, the basic foundation of claim has

not been disturbed. Even otherwise in the plaint, the suit was filed for claiming perfection of title on the basis of adverse possession and now, in addition thereto, they are claiming that they are Maurushi cultivator, therefore, they have acquired title of ownership. Both the reliefs cannot be said to be self-contradictory to each other for the simple reason that very foundation of the suit is same. Furthermore, it is well established principle of law that delay by itself cannot be a ground to reject the application for amendment. The Trial Court must try to find out as to whether amendment proposed by the parties is necessary for just decision of the case or not?

7. Accordingly, this Court is of the considered opinion that no jurisdictional error was committed by the Trial Court by allowing the application filed by the respondents under Order 6 Rule 17 of CPC.
8. Accordingly, petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

JP
JITENDRA KUMAR
PAROUHA

Digitally signed by JITENDRA KUMAR PAROUHA
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