

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 6th OF DECEMBER, 2022

MISCELLANEOUS PETITION NO.4469 OF 2022

Between:-

- 1. KAILASH, S/O SHRI UDHAM SINGH,
AGED ABOUT 42 YEARS, OCCUPATION
LABOUR, R/O AKLON TEHSIL
ISHAGARH DISTRICT ASHOKNAGAR
(MADHYA PRADESH)**
- 2. SMT. SAROJ BAI W/O SHRI KAILASH
AGED ABOUT 30 YEARS, OCCUPATION
HOUSE WIFE AND LABOUR, R/O AKLON
TEHSIL ISHAGARH DISTRICT ASHOK
NAGAR MADHYA PRADESH**

.....PETITIONERS

(BY SHRI R.P. SINGH KAURAV – ADVOCATE)

AND

- 1. KALURAM S/O SHRI MANGLIYA CAST
JATAV AGED ABOUT 75 YEARS R/O
VILLAGE AKLON TEHSIL ISHAGARH
DISTRICT ASHOK NAGAR MADHYA
PRADESH**
- 2. BALVEER JADEJA S/O SHRI DEEWAN
SINGH JADEJA CAST AHIRWAR AGED
ABOUT 26 YEARS, OCCUPATION
FARMER, R/O VILLAGE KIRORA TEHSIL
SHADORA DISTRICT ASHOKNAGAR
MADHYA PRADESH.**
- 3. MUSAV SINGH S/O KARODI LAL CAST
LODHI, AGED ABOUT 50 YEARS,
OCCUPATION FARMER, R/O VILLAGE
BAHERIYA TEHSIL ISHAGARH,**

**DISTRICT AHSOKNAGAR MADHYA
PRADESH**

4. **PRAKASH, S/O SOMA CAST AHIRWAR,
AGED ABOUT 44 YEARS, OCCUPATION
FARMER, R/O VILLAGE BAHERIYA
TEHSIL ISHAGARH DISTRICT AHSOK
NAGAR MADHYA PRADESH**
5. **STATE OF MADHYA PRADESH
THROUGH COLLECTOR DISTRICT
ASHOK NAGAR MADHYA PRADESH.**
6. **STATE THROUGH PATWARI GRAM
AKLON TEHSIL ISHAGARH DISTRICT
ASHOKNAGAR MADHYA PRADESH**

.....RESPONDENTS

***(BY SHRI JITESH SHARMA - GOVERNMENT ADVOCATE FOR THE
STATE)***

*This petition coming on for hearing this day, the Court passed the
following:*

ORDER

This petition under Article 227 of the Constitution of India has been filed against the order dated 04.03.2022 passed by First Civil Judge, Junior Division, Ashoknagar in Case No. RCSA No.351/2021, by which the application filed by the petitioners under Order 1 Rule 10 read with Section 151 of CPC for impleading them as defendants has been rejected.

2. It is submitted by the counsel for the petitioners that the respondent No.1 has filed a civil suit against the respondents No.2 to 6 for declaration of title and permanent injunction in respect of Survey No.256/2 area 1 hectare. The petitioners filed an application under Order 1 Rule 10 of CPC on the ground that the petitioners are in possession of the suit land and are necessary party. By the impugned order, their

application under order 1 Rule 10 CPC has been rejected.

3. On 28.11.2022, a specific statement was made by the counsel for the petitioners that although the petitioners in their application have claimed that they are in possession, but now they do not want to press the said submission made in the application and they want to get themselves impleaded just in order to support the State Government and other defendants. However, on 28.11.2022, the counsel for the petitioners sought time to make further submission. Today, once again Shri R.P. Kaurav made a submission that the petitioners hereby forgo all their rights which they have claimed in their application under Order 1 Rule 10 of CPC, but since they want to support the State Government in order to ensure that the case for protection of suit property is properly contested, therefore, they are necessary parties. Accordingly, counsel for the petitioners has relied upon the judgment passed by the Supreme Court in the case of **Kasturi v. Iyyamperumal and others** reported in **(2005) 6 SCC 733** and the judgment passed by the Division Bench of the Delhi High Court in the case of **Kranti Arora vs Digjam Ltd.** decided on **08.07.2022** in Case No. **RFA(OS) No. 7/2011**.

4. Heard the learned counsel for the petitioners.

5. The petitioners had filed an application under Order 1 Rule 10 read with Section 151 of CPC for their impleadment on the ground that they are in possession of the property in dispute and have personal interest. However, during the course of arguments, counsel for the petitioners made a statement twice, i.e., on 28.11.2022 and today in unequivocal words that **“the petitioners hereby forgo all their rights/claims in the property in dispute”** and now, they simply want to join the suit with an intention to ensure that the State Government is properly represented and

properly contest the suit for the protection of the State property. It is the case of the petitioners that they are proper parties. The Supreme Court in the case of **Kasturi (supra)** had held as under:-

13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

6. Since the petitioners have given up all their claims, therefore, now it cannot be said that no effective decree can be passed in absence of the petitioners. Even otherwise, the original case of the petitioners is that they are in possession of the property in dispute, therefore, some right was claimed against the State. If the said stand taken by petitioners is taken on its face value, then it is clear that by making an application under Order 1 Rule 10 of CPC, they wanted to claim their rights against co-defendant, i.e., State, which otherwise was also not permissible. Furthermore, the petitioners cannot be said to be proper party because a proper party means that presence of a party before the Court is necessary to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. The petitioners themselves have claimed that the State is the owner of the property in dispute. The plaintiff is a *dominus litis*. Furthermore, the petitioners could not point out any provision of law which enables any stranger to get himself impleaded just in order to support the contesting defendant. Although the

petitioners tried to take advantage of Section 301(2) of CrPC, but it is suffice to say that the present is a case of civil suit and provision of CrPC with regard to assisting the Public Prosecutor/State would not apply. The Supreme Court in the case of **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and others** reported in (1992) 2 SCC 524 has held as under:-

6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

7. The petitioners could not point out as to how their presence is necessary for complete and final decision on the question involved in the proceedings. The State is competent to defend itself. Furthermore, the Division Bench of Delhi High Court in the case of **Kranti Arora (supra)** has held that the plaintiff is a *dominus litis* and is a master of the suit. He cannot be compelled to fight against a person against whom he does not claim any relief. The plaintiff in a suit is required to identify the parties against whom he wants to implead as defendant and cannot be compelled to face litigation with the persons against whom he has no grievance. A third party is entitled to be impleaded as a necessary party if that party is

likely to suffer any legal injury due to outcome of the suit. The petitioner could not point any legal injury which he may suffer on account of the decision in the suit in question.

8. Under these circumstances, this Court is of the considered opinion that no jurisdictional error was committed by the Trial Court by rejecting the application filed by the petitioners.

9. Accordingly, the petition is fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

Abhi