

(2013) 09 MP CK 0228
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6524/09

Municipal Corporation

APPELLANT

Vs

Dr. Santosh Shrivastava

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 227

Citation : (2013) 09 MP CK 0228

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Piyush Bhatnagar, for the Appellant; A.K. Singh, Learned Counsel for Respondent No. 1 to 6 and Shri A.K. Chourasiya, Learned G.A. for the Respondent No. 7, for the Respondent

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.—In compliance of earlier order this matter is listed today for final disposal at motion stage and with the consent of the parties the same is taken up for consideration. Heard.

2. On behalf of the petitioners/defendants this petition is filed under Article 227 of the Constitution of India being aggrieved by the Order dated 6.5.2009 (Ann. P.4), passed by 3rd Additional Civil Judge to the Court of 1st Civil Judge Class-I, Bhopal in Civil Suit No. 2-A/2009, whereby his application filed under Order 1 Rule 10 of CPC to implead the allottees of shops constructed over the disputed land by the petitioner as defendants in the matter.

3. Having heard the counsel keeping in view his arguments I have carefully gone through the papers placed on record along with the impugned order. Respondent No. 1 to 6 herein have filed the impugned suit for declaration and perpetual injunction with respect of the land in dispute, on which the petitioner has carried out the construction of shops, which have been allotted to some persons, who have not been impleaded as party by the respondent No. 1 to 6/the plaintiffs, in

the suit as defendants.

4. In the available factual matrix of the case at hand, I am of the considered view that the persons who are in possession of aforesaid shops are not only proper but necessary party in the matter and in their absence the question involved in this suit could not be adjudicated effectively and as per settled position, if the presence of any of the party is required for passing the effective judgment and decree then they may be permitted to implead as party in the matter. My such view is fully fortified by the decision of Full Bench of this court in the matter of Panne Khushali and Another Vs. Jeewanlal Mathoo Khatik and Another, .

5. Pursuant to aforesaid, it is held that the trial Court has committed error in dismissing the aforesaid application of the petitioners filed under Order 1 Rule 10 of CPC. Consequently, by allowing this petition the impugned order is hereby set aside and by allowing the aforesaid application of the petitioners, the respondents/plaintiffs are directed to implead the proposed persons, who are in possession of different shops constructed over the disputed land, as defendants in the matter. It is further observed that parties shall be at liberty to amend their pleadings in this regard, if the same are necessary.

6. At the request of the parties present, the parties through their respective counsel are directed to remain present before the trial Court on 30.9.2013 to participate in the trial of the matter.

7. The petitioners' counsel is further directed to submit the certified copy of this order before the trial Court on 30.9.2013.

8. Petition is allowed as indicated above. C.C. as per rules.