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**(1999) 08 MP CK 0006**  
**In the Madhya Pradesh High Court**  
**Case No : C.R. No. 626 of 1999 (I)**

Tansukhlal and Others

APPELLANT

Vs

Smt. Vinita and Others

RESPONDENT

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**Date of Decision :** 12-08-1999

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 115

**Citation :** (2000) 2 MPJR 90

**Hon'ble Judges :** Jayant Govind Chitre, J

**Bench :** Single Bench

**Advocate :** S.C. Agrawal, for the Appellant; R.C. Kochatta, Advocate for Opposition 2, for the Respondent

**Final Decision :** Dismissed

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## Judgement

J.G. Chitre, J.

The petitioners have been aggrieved on account of rejection of the application presented by them in view of provisions of O.1 R.10 CPC. The order which is under challenge revolves around a typical circumstance of facts involved around the controversy in context with an ancestral house of which three brothers happen to be the owners. The said house was to be divided between three brothers, therefore, on account of family adjustment one brother namely Rajmal was satisfied by remaining two brothers by giving him a different property. The ancestral house was left for being partitioned amongst remaining brothers. Both the brothers were in physical possession of two separable portions of the house initially and were sharing common passage commonly as joint owners. It appears from the facts mentioned in the argument that some part of said property was transferred by opp. 1, Smt. Vinita during the pendency of the suit, and, therefore, the parties are now at contest before the trial court. O.1. R.10 provides--

Sub. R. (1) Where a suit has been instituted in the name of the wrong person as

plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bonafide mistake, and that it is necessary for the determination of the real matter in disputes so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

Sub. R. (2) provides-The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Sub. R. 3 provides that no person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

Sub. R. 4 provides where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the, plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

Sub. R. 5 provides that subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), S.22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

The transactions are complicated and the allegations made against each other are also touching the core of the controversy in issue. Therefore, this petition will have to be decided guardedly so as to see that anything observed here would not affect rights of contending parties in the trial court.

It is averred that Opp. no. 1. Smt. Vinita d/o Manikchandji Rudia had sold the frontal portion of the said building to opp. 2. 3, 4, 5 prior to the filing of the suit. The suit has been filed on 23.7.98. Said Vinita was daughter-in-law of Samrathmal and she had married with Ashok Kumar s/o Samrathmal. Ku. Megha happens to be daughter begotten during the existence of wed lock between Vinita and Ashok Kumar. Ashok Kumar had died in an accident and thereafter Opp. 1 Vinita has remarried. It is averred by the parties, that now Vinita does not have any interest in the said property. Petitioners want to add opponents 6, 7, 8, 9 as parties in the said suit.

While dealing with a revision petition in view of provisions of S.115 of CPC, the courts has to keep it in mind that though the order under challenge may not be suitable to the taste of the higher court, it needs to be maintained if the trial court has passed said order by remaining in four corners of its jurisdiction. The revisional court should not allow the parties to anticipate the problems which

may arise in future. It is to be kept in view that transactions which are ab initio illegal, will have to be examined in its proper perspective. What is illegal ab initio would be illegal for ever. Keeping in view the complications involved between the parties, by freak actions alleged or, may be, in fact should be left to be decided by the trial court which has to perform the duty of deciding the suit, after trial. The trial court should be left with the discretion to come to conclusion as to which is necessary party to be impleaded in the suit for finding out the truth for the purpose of adjudication of issues in controversy, without eclipsing its jurisdiction on anticipation of averments. By additions of parties which are not compulsively necessary, there is possibility of widening of dimensions of the issues in controversy and that may give rise to multiplication of issues to be adjudicated. The trial court should be always left to concentrate on the relevant issues in controversy. The tendency of increasing the dimensions of the suit and the issues in controversy should always be restricted. Multiplication of the issues in controversy should be avoided as far as possible by finding out the core of controversy and focusing attention on it so as to find out the root of the dispute which is to be adjudicated. Therefore, according to me provisions of S.151 have been brought in force. The trial court has kept that in view and has rightly decided to reject said application and prayer made by the petitioners. This court does not want to interfere with it and does not want to state anything more about the quality and weight of the rival contention of the parties at this stage so as to pollute the discretion of the court while conducting the trial and deciding said suit.

Shri S.C. Agrawal submitted that the respondents be prevented from raising the objections about the maintainability of the suit, if at all, brought by the petitioners separately. No such order can be passed by the court so as to nip out the legal rights of the litigants to contest a list in the court. If such objections are raised they will have to be decided in accordance with provisions of law in context with facts and circumstances of each case. At the most the petitioners can find out suitable remedy provided by law by appealing to the trial court again on better set of facts. The application is dismissed. It is made clear by this order that this court has not shown any inclination or indication touching merit of the rival contentions of the parties. The trial court is fully having discretion of adjudicating the averments made and denied by the litigating parties. C.C.