

**(2017) 03 MP CK 0107**

**MADHYA PRADESH HIGH COURT**

**Case No:** 247 of 2016

Ramneek Shah

APPELLANT

Vs

Chandra Kumar Jain

RESPONDENT

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**Date of Decision:** March 22, 2017

**Acts Referred:**

- Code of Civil Procedure, 1908, Order 7 Rule 11, Section 115 - Revision

**Hon'ble Judges:** Anjuli Palo

**Bench:** Single Bench

**Advocate:** R.K. Sanghi, Ashish Kumar Nema

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### **Judgement**

1. This civil revision has been preferred by the defendant no.13/applicant under Section 115 of the Code of Civil Procedure arising out of order dated 2.5.2016 passed by the 18th Additional District Judge, Jabalpur in Civil Suit No.17-A/2015.

2. The plaintiff/non-applicant no.1 Smt. Seema Dubey filed a suit for specific performance of contract, declaration and permanent injunction in respect of suit land Khasra Nos.286, 287, 269 and 270 total area 8.50 acres of Mouja Tilhari, Settlement No.231 Tahsil, District Jabalpur against defendant No.1/non-applicant no.2 Smt. Jeen Hookins, defendant no.2/non-applicant no.3 Prakash Dhirawani and subsequently the applicant/defendant no.13 and other purchaser were impleaded as defendants. The aforesaid civil suit was based on an agreement to sale dated 17.5.1999 (Annexure-A/2) and a modification of the agreement to sale dated 26.1.2001 (Annexure-A/3). Agreement dated 17.1.1999 was the parent agreement for consideration of Rs.52,51,000/- between Mukesh Dubey husband of Seema Dubey, Sanjay Bhatia and George Hookins (Husband of defendant No.2/non-applicant no.2 Jean Hookins). The modified agreement was executed between the plaintiff/non-applicant no.2 Seema Dubey and defendant

no.1/non-applicant no.2 Jean Hookins. By modification in agreement only para 4 of the parent agreement (Annexure- A/2) stands deleted.

**3.** Thereafter, the applicant/defendant no.13 filed an application under Order 7 Rule 11 of the CPC along with the written statement (Annexure-A/4) for rejection of the plaint (Annexure-A/5) with contention that the suit filed by the non-applicant no.1 is not tenable for want of proper valuation as total sale price agreed in parent agreement (Annexure- A/2) and modification agreement (Annexure-A/3). Valuation of the suit ought to have been Rs.52,51,000/- which required to be paid ad valorem Court fees thereon. In the instance application, the applicant also submitted that the suit is bad for non-joinder of necessary parties i.e. Mukesh Dubey and Sanjay Bhatia and one other.

**4.** The trial Court vide order dated 2.5.2016 dismissed the aforesaid application (Annexure-A/7). The defendant no.13/applicant challenged the impugned order on the grounds that the learned trial Court decided the issues in a most bizarre manner, which is perverse and liable to be dismissed.

**5.** Heard the learned counsel for the parties at length and perused the record.

**6.** Learned trial Court has held that the suit was pending since year 2014. Aforesaid objection raised by the defendant no.13/applicant was mixed question of law and fact, which cannot be adjudicated without adducing evidence. The respondent no.1/plaintiff valued the suit for Rs.17,10,000/- and paid Court fees Rs.1,10,300/-.

**7.** On the above grounds, learned trial Court dismissed the petition under Order 7 Rule 11 of the CPC filed by the applicant/defendant no.13.

**8.** In case of "Bhau Ram Vs. Janak Singh and others, (2012) 8 SCC 701, wherein it is held as under:-

"Only averments in plaint can be looked into while deciding application for rejection of plaint. Pleas taken by defendant in written statement not relevant. Multiple suits between same parties in respect of different parcels of land."

**9.** The respondent no.1/plaintiff prayed for a decree of specific performance of contract. Further he prayed for relief of declaration that such deeds executed by the defendant no.2/respondent no.2 in favour of defendant no.3/respondent no.3 and subsequently respondent no.3 in favour of rest of the defendants/respondents dated 28.2.2002, 18.3.2005, 3.3.2005, 25.7.2005, 29.4.2005, 20.4.2005, 4.4.2005, 28.7.2005 be declared as null and void and not binding on the plaintiff/respondent

no.1. In above sale deeds the respondent no.1/plaintiff Smt. Dubey was not a party therefore, not required to value the suit at Rs.52,51,000/-.

**10.** In case of "Dharmraj Vs. Vaidhya Nath Prasad Khare and others, 2002 (1) M.P.H.T. 301, it is held as under:-

"If plaintiff has not executed the deed, plaintiff claimed relief of declaration that the said deed is void. He has also claimed the relief of permanent injunction. He is required to pay fixed Court-fee as per Article 17 of Schedule-II on the relief of declaration. The plaintiff is not required to pay Court-fee on the valuation for the purpose of pecuniary jurisdiction. It is further held by this Court that normally accepts the valuation put by the plaintiff, if it is not too low or high. In cases falling within paragraph (iv) of Section 7, the plaintiff is entitled to put his own valuation."

In the light of above principle the contention of learned counsel for the applicant regarding valuation, is not acceptable.

**11.** Objection regarding non-joinder of necessary parties can be considered because Mukesh Dubey husband of plaintiff/respondent no.1 Smt. Seema Dubey and Sanjay Bhatia were parties in agreement to sale dated 17.1.1999. For that learned counsel for the appellant has placed reliance on "Mukesh Kumar and others Vs. Col. Harband Waraich and others (1999) 9 SCC 380", wherein it has been held as under:-

"The parties entitled to specific performance in order to obtain specific performance, all co-contractees must be before the Court but all need not be ranged on the same side if any of them declines to be so arrayed. However, where a single indivisible contract is to convey land to several persons some of the joint contractees cannot seek specific performance if the other contractees do not want the relief."

**12.** On the aforesaid discussions, the suit is not liable to be rejected. In this regard, the case law cited by learned counsel for the appellant in case of "Suresh Kumar Dagla Vs. Sarwan and another, (2014) 14 SCC 254" is not applicable in this case because question of limitation is not involved in the present case. Therefore, this civil revision is dismissed with regard to the objection of valuation and partly allowed with the direction that the learned trial Court shall implead Mukesh Dubey and Sanjay Bhatia as defendants.