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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 18th OF JANUARY, 2023

MISC. PETITION No. 3985 of 2021

BETWEEN:-

1. **SHAILESH SHASTRI S/O SHRI VIDHYAPATI SHASTRI, AGED ABOUT 32 YEARS, OCCUPATION: BUSINESS 346, LIG-II, INDIRA NAGAR, AGRA ROAD (MADHYA PRADESH)**

2. **DEVASHISH SHATRI S/O SHRI VIDHYAPATI SHASTRI, AGED ABOUT 47 YEARS, OCCUPATION: ADVOCATE 346, LIG-II, INDIRA NAGAR, AGRA ROAD (MADHYA PRADESH)**

3. **MUKUL SHATRI S/O SHRI VIDHYAPATI SHASTRI, AGED ABOUT 30 YEARS, OCCUPATION: BUSINESS 346, LIG-II, INDIRA NAGAR, AGRA ROAD (MADHYA PRADESH)**

4. **VIDHYAPATI SHASTRI SINCE DECEASED NOW LRS SHEELADEVI SHATRI W/O VIDHYAPATI SHASTRI, AGED ABOUT 62 YEARS, OCCUPATION: HOUSEHOLD 346, LIG-II, INDIRA NAGAR, AGRA ROAD (MADHYA PRADESH)**

.....PETITIONERS

(SHRI NITIN PHADKE ADVOCATE FOR PETITIONERS)

AND

1. **AVDHESH (SINCE DECEASED) NOW LRS SMT. RAMA @ PAVITRA SHASTRI W/O LATE AVDHESH SHASTRI, AGED ABOUT 40 YEARS, VITTAHLNATHJI MANIR PARISAR, NAYA BAZAAR, NATHDWARA (RAJASTHAN) (RAJASTHAN)**

2. **AVDHESH (SINCE DECEASED) NOW LRS KUMARI MANSI MINOR THR THEIR MOTHER RAMA @ PAVITRA SHASTRI W/O AVDHESH SHATRI, AGED ABOUT 40 YEARS, VITTAHLNATHJI MANDIR PARISAR, NAYA BAZAAR, NATHDWARA (RAJASTHAN) (RAJASTHAN)**

3. **AVDHESH (SINCE DECEASED) NOW LRS ASHUTOSH MINOR THR THEIR MOTHER RAMA @ PAVITRA SHASTRI W/O LATE**

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AVDHESH SHASTRI, AGED ABOUT 40 YEARS, VITTAHLNATHJI MANIR PARISAR, NAYA BAZAAR, NATHDWARA (RAJASTHAN) (RAJASTHAN)

4. AVDHESH (SINCE DECEASED) NOW LRS UDDHAV MINOR THR THEIR MOTHER RAMA @ PAVITRA SHASTRI W/O LATE AVDHESH SHASTRI, AGED ABOUT 40 YEARS, VITTAHLNATHJI MANDIR PARISAR, NAYA BAZAAR, NATHDWARA (RAJASTHAN) (RAJASTHAN)

5. MANORAMA @ SEEMARANI W/O THAKUR KESARSINGH, AGED ABOUT 58 YEARS, OCCUPATION: HOUSEHOLD SAWAI VIJAY BANGLA, STATION ROAD, BADNAGAR (MADHYA PRADESH)

6. SHASHIKALA ACAHRYA W/O NARESHCHANDRA ACHARYA SINCE DECEASED THR LRS SUNIL ACHARYA S/O NARESHCHANDRA ACHARYA, AGED ABOUT 55 YEARS, OCCUPATION: BUSINESS NEAR SAHASTRA ODICHYA BRAMHAN SAMAJ DHARAMSHALA NEEMWADI SHAJAPUR (MADHYA PRADESH)

7. SHASHIKALA ACAHRYA W/O NARESHCHANDRA ACHARYA SINCE DECEASED THR LRS SUNITA TIWARI W/O MAHESH TIWARI, AGED ABOUT 51 YEARS, OCCUPATION: HOUSEHOLD T-2, NARMADA ULTIMATE CAMPUS, SHIRDIPURAM, MANDAKINI COLONY, KOLAR ROAD (MADHYA PRADESH)

8. SHASHIKALA ACAHRYA W/O NARESHCHANDRA ACHARYA SINCE DECEASED THR LRS SMT. SMITA @ RENU TAHKUR W/O HIREN THAKUR, AGED ABOUT 47 YEARS, OCCUPATION: HOUSEHOLD S-1, UDIT APARTMENT, GAJANAND SOCIETY, B-H LAURACAN, KAILASH FARM ROAD, GANESH CHOKDI, ANAND (GUJARAT) (GUJARAT)
9. MADHURI VYAS W/O HARINARAYAN VYAS (SINCE DECEASED) NOW LRS DEVSSH VYAS S/O HARINARYAN VYAS, AGED ABOUT 28 YEARS, NEAR SATYANARAYAN MANDIR, DHABA ROAD, UJJAIN (MADHYA PRADESH)

10. MADHURI VYAS W/O HARINARAYAN VYAS (SINCE DECEASED) NOW LRS SHELBALA D/O HARINARAYAN VYAS, AGED ABOUT 34 YEARS, NEAR SATYANARAYAN MANDIR, DHABA ROAD, UJJAIN (MADHYA PRADESH)

11. MADHURI VYAS W/O HARINARAYAN VYAS (SINCE DECEASED) NOW LRS DEVSSH ARCHNA D/O HARINARAYAN VYAS, AGED ABOUT 26 YEARS, NEAR SATYANARAYAN

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MANDIR, DHABA ROAD, UJJAIN (MADHYA PRADESH)

12. MADHURI VYAS W/O HARINARAYAN VYAS (SINCE DECEASED) NOW LRS SANGEETA W/O CHETANYA TRIVEDI, AGED ABOUT 28 YEARS, 28, NAVI WADI, NARAYAN NIWAS, FIRST FLOOR, ROOM NO. 13-14, DADISHETH AGYARI LANE, MUMBAI (MAHARASHTRA)

13. SMT. SUMAN JOSHI W/O RAJESH JOSHI, AGED ABOUT 40 YEARS, KHUNI BANGLA, POST KALOL, JILA MOHSANA NORTH GUJARAT (GUJARAT)

14. MINAKSHI JOSHI W/O GOPAL JOSHI, AGED ABOUT 38 YEARS, JAIL COLONY, NAYAPURA, UJJAIN (MADHYA PRADESH)

15. REKHA RANI THAKKAR W/O YADUNANDAN THAKKAR, AGED ABOUT 30 YEARS, RAMESHCHANDRA THAKKUR THEKEDAR, KASARI DARWAJA, RATLAM (MADHYA PRADESH)

16. STATE OF M.P. THR THE COLLECTOR UJJAIN (MADHYA PRADESH)

17. CHUNNILAL S/O CHAINA VILLAGE VIRIYAKHEDI, TEHSIL BADNAGAR, DIST UJJAIN (MADHYA PRADESH)

18. NANDIBAI W/O PUNA VILLAGE VIRIYAKHEDI, TEHSIL BADNAGAR, DIST UJJAIN (MADHYA PRADESH)

19. GEETABAI W/O RATANLAL GAURJI BRAMHAN, AGED ABOUT 70 YEARS, VILLAGE PALDUNA, TEHSIL BADNAGAR, DIST UJJAIN (MADHYA PRADESH)

20. GODAWARIBAI W/O KESARSINGH, AGED ABOUT 55 YEARS, VILLAGE GURDAKHEDI, TEHSIL INDORE DIST INDORE PRESENTLY RESIDING AT PALDUNA TEHSIL BADNAGAR DIST UJJAIN (MADHYA PRADESH)

21. VANDANABAI W/O DILIP, AGED ABOUT 26 YEARS, VILLAGE GURDAKHEDI, TAHSIL INDORE, DIST INDORE PRESENTLY RESIDING AT PALDUNA, TEHSIL BADNAGAR (MADHYA PRADESH)

22. SUNITABAI W/O SUNIL, AGED ABOUT 23 YEARS, VILLAEG GURDAKHEDI TEHSIL INDORE, DIST INDORE PRESENTLY

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RESIDING AT PALDUNA, TEHSIL BADNAGAR (MADHYA PRADESH)

23. **GANGABAI W/O DARIYAO SINGH, AGED ABOUT 60 YEARS, VILLAGE GURDAKHEDI, TEHSIL INDORE DIST INDORE PRESENTLY RESIDING AT PALDUNA TEHSIL BADNAGAR DIST UJJAIN (MADHYA PRADESH)**

24. **KALPANABAI W/O RAJKUMAR, AGED ABOUT 30 YEARS, VILLAGE GURDAKHEDI, TEHSIL INDORE DIST INDORE PRESENTLY RESIDING AT PALDUNA TEHSIL BADNAGAR DIST UJJAIN (MADHYA PRADESH)**

25. **ASHABAI W/O KESARSINGH, AGED ABOUT 25 YEARS, VILLAGE GURDAKHEDI, TAHSIL INDORE, DIST INDORE PRESENTLY RESIDING AT PALDUNA, TEHSIL BADNAGAR (MADHYA PRADESH)**

26. **SURAJBAI W/O LATE GOPALSINGH, AGED ABOUT 60 YEARS, VILLAEG SHIV NAGAR, TAHSIL MHOW, DIST INDORE (MADHYA PRADESH)**

27. **RAJESH S/O GOPALSINGH, AGED ABOUT 40 YEARS, VILLAGE SHIV NAGAR, TAHSIL MHOW DIST INDORE (MADHYA PRADESH)**

28. **RISHI S/O LATE GOPALSINGH, AGED ABOUT 25 YEARS, VILLAGE SHIV NAGAR, TAHSIL MHOW DIST INDORE (MADHYA PRADESH)**

29. **PRAHLAD S/O KANHAIYALAL KANKARIYA CHIRAKHAN TEHSIL AND DIST UJJAIN (MADHYA PRADESH)**

30. **ASHARAM S/O NANURAM, AGED ABOUT 55 YEARS, VILLAGE PALDUNA, TEHSIL BADNAGAR, DIST UJJAIN (MADHYA PRADESH)**

31. **BHAGWATIPRASAD S/O BASANTILAL JI, AGED ABOUT 62 YEARS, BAKHAR MOHALLA, ARNOD, DIST CHITTORGARH RAJASTHAN (RAJASTHAN)**

.....RESPONDENTS

(SHRI AVINASH KUMAR KHARE, ADVOCATE FOR RESPONDENTS)

….....

This petition coming on for admission this day, the court passed the following:

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O R D E R

Heard on **IA No.484 of 2023** which is an application for amendment in the memo of petition. Keeping in view the reasons mentioned in the application, the same is allowed.

2] Necessary amendment be carried out in the memo of petition during the course of the day. Accordingly, **IA No.484/2023** stands disposed of.

3] This miscellaneous petition under Article 227 of the Constitution of India has been filed against the orders dated **23.07.2021**, and **03.08.2021**, passed in Civil Suit No.99-A/2018 and Civil Suit No.100-A/2018 as both the suits have been consolidated in the trial Court by First Civil Judge, Senior Division, Badnagar, District - Ujjain (MP).

4] By order dated **23.07.2021**, the learned Judge of the Trial Court has recalled its earlier order dated 07.12.2019 whereby, at the instance of the plaintiffs, it was directed to produce the service record of one Prabhakar Shastri, and vide order dated **03.08.2021**, the plaintiffs right to lead further evidence has been closed on the ground that the suit is pending since last more than 20 years and the plaintiffs have still not completed their evidence.

5] In brief, the facts of the case are that the present civil suit was filed by the original plaintiffs as regards partition, declaration and permanent injunction, and when the suit was fixed for plaintiffs evidence in the year 2019, an application was filed on their behalf seeking production of certain documents under Order 16 Rule 1 of Code of Civil Procedure, 1908 for

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calling the record of plaintiff's ancestor namely; Shri Prabhakar Shastri who was a Class-3 employee according to the plaintiff as the said Shri Shastri could not have purchased the property from his own funds. The aforesaid application was allowed by the learned Judge of the Trial Court on 07.12.2019, and the matter was fixed before the Trial Court for production of the aforesaid record. Thereafter, the matter was fixed before the Trial Court on many occasions for production of the aforesaid document but till date they have not been produced despite process-fee has been paid by the plaintiffs.

6] The learned judge of the Trial Court, taking note of the directions issued by this Court regarding expeditious disposal of old civil suits, vide its order dated **23.07.2021,** has decided to recall its earlier order dated 07.12.2019 for calling of record of Shri Shashtri, and directed the plaintiffs to submit certified copies of the record as the record which is being called is also a public document. Subsequently, vide order dated **03.08.2021** right of the plaintiff to led evidence has also been closed taking into consideration the fact that the case is pending since last 20 years.

7] Counsel for the petitioners has assailed both the aforesaid orders on the ground that the impugned order dated 23.07.2021 is virtually the orders of review of Civil Court's earlier order which is not permissible under the law. It is submitted that only on the ground that the High Court has directed the Civil Court to expedite the matter, such an illegal order of recalling earlier order cannot be passed by the civil court especially when it was

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not even challenged by the defendants. It is also submitted that similarly, order dated 03.08.2021 closing the right of the plaintiff to lead evidence is also bad in law as the matter was pending before the Civil Court for production of certain document and in the midway, without any error on the part of the plaintiff, even when the documents have not been produced before the Civil Court, the right of plaintiffs to lead further evidence has been closed. Thus, it is submitted that both the orders are liable to be set-aside.

8] Counsel for the respondents, on the other hand, has vehemently opposed the application and submits that no illegality has been committed by the Courts below for the reason that the defendants seek to examine only two witnesses namely Manorama @ Seema Rani and Bhagwati Prasad. The age of Seema Rani is mentioned as 58 years in the present petition, whereas her present age is 88 years and the age of Bhagwati Prasad is mentioned as 63 years in the petition, whereas his current age is 90 years, due to pendency of petition, thus it is submitted that the intention of petitioners is only to further prolong the matter so that both these material witnesses could not be examined in the Trial Court as they are nearing the fag end of their lives due to their old age. Counsel has also submitted that the respondents are also ready to admit the documents, if the certified copies of the same are filed on record, and the Trial Court may be directed to expedite the matter.

9] Heard counsel for the parties and perused the record.

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10] From the record it is apparent that the learned Judge of the trial Court has recalled its own order dated 07.12.2019, whereby the application filed by the plaintiffs to call for certain documents of their ancestor was allowed. The reason for such recall is stated to be to expedite the trial as it is pending since long and as per the directions issued by the High Court, these matters have to be disposed of at an early date. In the considered opinion of this Court only for disposal of a case, which is pending since long, no such order can be passed by the Civil Court by adopting a shortcut method, even if there are directions issued by the High Court to expedite the trial. In case of any difficulty, the learned Judge of the trial Court was expected to take guidance from the High Court, but to resort to such measure, i.e., to recall its own order and snap the further right of the plaintiffs to lead evidence only for the disposal's sake, is a procedure alien to the CPC and by no stretch of imagination, can be said to be legal, just or proper.

11] In such circumstances, **impugned orders dated 23.07.2021, and 03.08.2021 are hereby set aside**. However, taking note of the admission on the part of the learned counsel for the respondents that he would admit the documents, which the plaintiffs seeks to place on record, if the certified copies of the same are filed in the Civil Court and the counsel for the petitioners/plaintiffs has also submitted that he would file certified copies of the documents, if the same are provided to him by the concerned Department, this Court is inclined to dispose of this petition with a direction to the plaintiffs to

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produce the certified copies of the documents, if available, within a period of three weeks from the week commencing 30.01.2023 and notwithstanding the production of such documents, the plaintiffs shall also be allowed to lead their evidence within further one month's time. Thereafter, the defendants may lead their evidence and the learned Judge of the trial Court is requested to proceed further with the case expeditiously, in accordance with law.

12] It is made clear that this Court has not reflected upon the merits of the case.

13] With the aforesaid, the petition stands allowed and **disposed of**.

(SUBODH ABHYANKAR)
J U D G E

Arun/-