



1

CR-229-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 5th OF AUGUST, 2026CIVIL REVISION No. 229 of 2025*MANOHARLAL CHOUBEY AND OTHERS**Versus**PRASHANT ALIAS NEELU PATHAK AND OTHERS*

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Appearance:

*Shri Akhilesh Ku Jain - Advocate for the petitioner/applicant..**Shri Neeraj Pathak- Advocate for the respondent.*
.....WITHMISC. PETITION No. 1336 of 2022*MANOHARLAL CHOUBEY AND OTHERS**Versus**PRASHANT ALIAS NEELU PATHAK AND OTHERS*

.....
Appearance:

Shri Akhilesh Kumar Jain - Advocate for the petitioner.
.....

ORDER

CR No.229 of 2025 has been filed with a delay of 730 days. IA No. 4625 of 2025 is filed for condonation of delay. It is contended in the application that earlier the applicant had filed CR No.213 of 2022 but on 20.02.2025 the said revision was withdrawn with liberty to file a duly constituted fresh revision and thereafter now this revision has been filed challenging the order dated 21.02.2022. It is contended that the earlier revision was withdrawn on 20.02.2025 and the present revision has been filed without much delay thereafter on 27.02.2025.



Considering the assertions made in IA No.4625 of 2025, the same is **allowed** and the delay caused in filing the revision is condoned.

Both the cases are heard on merits.

2. These two cases have been filed challenging the interlocutory orders passed during course of the same suit and since both these orders have some material bearing on each other, therefore these two matters have been heard together and are being decided by this common order.

3. CR No.229 of 2025 has been filed challenging the order passed by the Trial Court dated 21-02-2022 whereby the Trial Court has rejected the application under Order 7 Rule 11 CPC filed by the present applicant-defendant.

4. MP No.1336 of 2022 has been filed challenging the order dated 04.12.2021 passed in the same suit i.e. RCSA No.34 of 2021 whereby the application for amendment in the plaint has been allowed by the Trial Court.

5. It is the case of the petitioner that by allowing the amendment vide Order dated 04.12.2021 the Trial Court has allowed such certain amendments on account of which the nature of the suit has changed. It is also alleged that by allowing the amendment, the application under Order 7 Rule 11 CPC lost some of its force which was subsequently rejected by the order dated 21.02.2022, which is subject matter of CR No.229 of 2025.

6. A suit has been filed by the plaintiff-respondent before the Trial Court wherein it has been mentioned that there was an agreement between the parties and in terms of said agreement the plaintiff has become 11th partner of the partnership firm namely M/s. Maharaja Agrasen Developers. Relief was sought in the original plaint that the said agreement dated 30.10.2011 be declared to be binding between the parties and the defendant be held entitled to the same benefit which is being granted to other partners of the firm. A further prayer was made



that the plaintiff be declared partner of the firm and he should also be held entitled to get registered sale deed executed in respect of land mentioned in the relief clause, at par with other partners of the firm.

7. It was further prayed by way of permanent injunction that in the colony that has been developed by the plaintiff, the partners of the defendant firm be restrained from carrying out any sale transactions till the agreement dated 30.10.2011 is performed.

8. The defendants appeared in the suit and filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the firm in question is not a registered partnership firm and since the firm is unregistered partnership firm and since the alleged agreement is unregistered one, therefore it cannot be stated to be an agreement of induction into partnership firm. Hence, in terms of Section 69 of Partnership Act, the suit is barred by law.

9. Faced with this application, the plaintiff filed an application for amendment in the plaint and the relief clause was amended. In place of the earlier prayer which was made for declaring the plaintiff to be partner, the prayer clause has been amended and now only the share has been sought in terms of the agreement dated 30.10.2011 and the relief as partner in the firm has been deleted.

10. The aforesaid amendment has been allowed by the Trial Court and after the amendment was allowed, thereafter the application under Order 7 Rule 11 CPC was also rejected by the Trial Court against which the defendants are before this Court.

11. The learned counsel for the petitioner-defendants has vehemently argued that as per Section 69 of Indian Partnership Act, the suit was not maintainable unless the person alleged to be a partner in the firm is seeking such



relief in a registered firm and the person suing has been shown in the Register of Firms as a partner in the firm. Since these conditions were not fulfilled, therefore the suit was hit by Section 69 of Indian Partnership Act and just to get over this fatal defect in the suit, application for amendment in the plaint was filed which has erroneously been allowed by the Trial Court. It is argued that the amendment changes the nature of the suit and this could not have been allowed and the amendment was filed just to get over the objection of Section 69 of Indian Partnership Act. It is further argued that even after the amendment, the suit remains not maintainable because ultimately the relief has been founded only on the partnership deed vide agreement dated 30.10.2011 and since the plaintiff is not in the Register of partners of the firm, therefore any relief in terms of the said partnership agreement cannot be sought by alleged partner whose name does not figure in the list of partners in the Register of registered firms.

12. It is further argued that the Trial Court could not have allowed the amendment by changing the very basic nature of the suit. By allowing the impugned amendment, the nature of the suit has been changed.

13. *Per contra*, the impugned orders are vehemently supported by learned counsel for the respondent-plaintiff by contending that the amendment does not change the nature of the suit. Since the amendment was filed prior to commencement of trial, therefore the same was required to be construed liberally because the amendment application was filed immediately after filing of written statement by the defendants and before settling of the issues. Such amendment was not hit by proviso to Order 6 Rule 17 C.P.C. and has rightly been liberally construed by the Trial Court. Even otherwise, the amendment does not change the nature of the suit.

14. Upon hearing the counsel for the rival parties at length and on perusal



of the record, it is seen that initially certain reliefs were prayed in the suit including declaration as partner in the firm and seeking certain benefits as partner of the firm. The suit is founded on agreement dated 30.10.2011 which has been perused by this Court. The agreement in its heading caption mentions it as an agreement and within brackets the words 'for partnership' are mentioned. Clause 1 of this agreement mentions that the plaintiff would be the 11th partner of the firm but in succeeding paras of the said agreement it is mentioned that the plaintiff shall resolve all the disputes in respect of the properties and would start sale of the plots within 5 months. The plaintiff shall take necessary permissions and statutory clearances for development of the colony and he would contribute equal at par with other partners. The plaintiff would contribute the entire part for resolution of any problems in execution of the project and would bear the entire expenses of conveyance, office and incidental expenses. The firm shall have right to cancel the agreement unilaterally. The Trial Court while rejecting the application under Order 7 Rule 11 CPC seems to have rightly held that the said agreement prima facie cannot be stated to be a partnership deed and the true nature of the agreement seems to be an agreement to perform certain works, or to act upon something. It does not appear to be a partnership deed as no capital to be brought by the incoming partner has been mentioned and no proportion of share in the profits has been mentioned.

15. This Court agrees with the aforesaid logic and justification of the Trial Court and finds that the true nature of the document is something which has to be adjudicated during trial and from a bare perusal of the document dated 30.10.2011, the same can be argued to be not a partnership deed but a simple agreement.

16. Therefore, this Court does not find any error in the rejection of



application under Order 7 Rule 11 CPC. At the outset it cannot be said that the suit has been filed for seeking profits or certain benefits in an unregistered partnership firm by a partner and is hit by Section 69 of Indian Partnership Act and this objection can only be considered upon recording of evidence. CR 229 of 2025, therefore, stands *dismissed*.

17. Therefore, the impugned order dated 21.02.2022 passed by the Trial Court rejecting the application under Order 7 Rule 11 CPC is upheld. However, liberty is reserved to the petitioner to take objection in the written statement and to press the said objection at the time of trial.

18. So far as the order dated 04.12.2021 passed in MP No.1336 of 2022 is concerned whereby the amendment application has been allowed, no doubt the amendments which have been sought in the plaint are extensive amendments that have been allowed by the Trial Court. It slightly changes the nature of the suit by seeking to convert a suit for declaration and permanent injunction to a suit for declaration and mandatory as well as permanent injunction. Various other amendments have been sought in the plaint which do not seem to be totally changing the nature of the suit because ultimately the suit is founded on the same cause of action, that is the agreement dated 30.10.2011. The cause of action has not changed. There is some amendment in the pleadings, and the relief clause has been changed to an extent by deleting the relief which was earlier sought in the share of profits of partnership firm. Now simply the relief as per the agreement dated 30.10.2011 has been sought. The amendment was a pre-trial amendment having been moved before commencement of trial, therefore the trial court has rightfully construed the said amendment liberally. The plaintiff could always have brought a separate suit for the said reliefs and it would only have led to



7

CR-229-2025

multiplicity of litigation. The application was filed not long after the suit had been filed and it was filed before settling of issues. It does not also change the nature of the suit. The same could have been allowed in terms of judgment of the Apex Court in the case of *LIC Vs. Sanjeev Builders, 2022 (16) SCC 1*.

19. Therefore, this Court does not find any error in the impugned order dated 04.12.2021 also whereby the amendment application has been allowed by the Trial Court. In view of the aforesaid, MP No.1336 of 2022 also stands *dismissed*.

(VIVEK JAIN)
JUDGE

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