

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

**ON THE 16<sup>th</sup> OF OCTOBER, 2024**

**CIVIL REVISION No. 186 of 2022**

***USHA E. FRANCIS***

*Versus*

***COMMAND OFFICER ARMY EDUCATION CORE AND OTHERS***

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**Appearance:**

*Shri Dharmendra Singh, Advocate for the applicant.*

*Shri Vikram Singh, Standing counsel for the respondent No.1.*

*None for the respondents No.2, 3 and 4 though served.*

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**ORDER**

This civil revision has been preferred by the applicant/defendant 4 challenging the order dated 15.12.2021 passed by First Civil Judge, Senior Division, Pipariya, Link Court Pachmadhi, District Hoshangabad in RCSA No.1/2021, whereby applicant/defendant 4's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for brevity 'CPC') has been dismissed.

2. Learned counsel for the applicant submits that although the suit has been filed for declaration of title and permanent injunction but from perusal of relief clause it is clear that plaintiff has not sought any declaration of title over the land in question and has merely sought relief for declaring the order dated 8.7.2020 to be null and void and permanent injunction. He submits that in the light of decision of Hon'ble Supreme Court in the case of Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs and others, **(2008) 4 SCC 594**; in absence of relief of declaration of title, the suit is not maintainable. With support of decision in the case of **Eldeco Housing and Industries Ltd. Vs. Ashok Vidhyarthi and others, 2023 SCC OnLine SC 1612**, he further submits that the suit has been filed by Comman Officer, who is not authorized to file the suit on behalf of the Army Education

Core Training College and Centre, Hoshangabad and in the suit no averment has been made regarding ownership of Union of India or Army and if the suit property belongs to the Union of India or Army, then the suit ought to have been filed on their behalf. He further submits that trial Court has committed an illegality in dismissing the application without taking into consideration aforesaid aspect of the matter. With these submissions, he prays for allowing this civil revision.

3. Learned counsel appearing on behalf of the respondent 1/plaintiff supports the impugned order with the further prayer of dismissal of civil revision.

4. Heard learned counsel for the parties and perused the record.

5. Perusal of plaint shows that the plaintiff has not sought any relief of declaration of title in respect of ownership over the land in question and has just sought relief for declaring the order dated 8.7.2020 to be null and void. In the case of Anathula Sudhakar (**supra**), Hon'ble Supreme Court has held that if there are clouds over title of the plaintiff in respect of the suit property, the suit, in absence of relief of declaration of title, is not maintainable, but the same being a question to be decided after recording evidence of parties, in my considered opinion, the suit at the stage of consideration of application under Order VII Rule 11 of CPC, cannot be dismissed.

6. So far as the question of institution of suit by Comman Officer in place of Union of India or Army, and whether the Comman Officer is authorized or not to institute the suit, is concerned, the same is also a question to be decided after recording evidence of the parties and at the stage of consideration of application under Order VII Rule 11 CPC, the plaint cannot be rejected.

7. Resultantly, declining interference in the impugned order, instant civil revision fails and is hereby **dismissed**.

8. Misc. application(s), pending if any, shall stand closed.

**(DWARKA DHISH BANSAL)**  
**JUDGE**

