



1

MP-3212-2025

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 7<sup>th</sup> OF OCTOBER, 2025MISC. PETITION No. 3212 of 2025*GAYATRI BAI MEENA**Versus**M/S SHILANYAS INFRA*

.....  
Appearance:

*Shri Ajay Gupta - Senior Advocate with Shri Rajeev Mishra -  
Advocate for the petitioner.*

*Shri Ankit Saxena - Advocate for respondent No.1.*

*Shri Amit Vikram Pandey- Panel Lawyer for the respondent/State.*  
.....

*Reserved on : 22.08.2025*

*Pronounced on : 07.10.2025*  
.....

ORDER

The present petition has been filed by the petitioner/plaintiff being aggrieved by the order dated 13.01.2025 passed by 12th Civil Judge, Junior Division Bhopal in RCS No.235A/2015; whereby, the application submitted by the petitioner/plaintiff under Section 151 for recalling the order dated 18.08.2025 has been rejected.

2. It has been contended by learned senior counsel for the petitioner/plaintiff that the suit for declaration and permanent injunction has been filed by the petitioner/plaintiff in respect of land bearing survey No.404/2/2/2 admeasuring 0.65 hect. situated at village Barkheda Pathani,



Tehsil Hujur, District Bhopal. It is averred in the plaint that from the perusal of the revenue records the petitioner came to know that part of her land bearing survey No.404/2/2/1, admeasuring 0.61 hect. has been transferred to respondent/defendant through a forged power of attorney dated 31.01.2023. On the basis of such transfer, a new survey No.404/2/2/2 admeasuring 0.65 hect. out of land 404/2/2/1 has been created in the name of respondent/defendant. It is further submitted that the petitioner/plaintiff has never executed such a power of attorney in favour of Hari Charan Meena and accordingly, prayed for declaration that the sale deed be declared as null and void.

3. It is submitted that after sometime the respondent transferee who has purchased the part of the land of the petitioner/plaintiff has also filed suit No.235A/2015 on 04.03.2015 seeking a declaration of title and possession over the part of the land sold to the transferee by the power of attorney. It is further submitted that the civil court on the application of the respondent/defendant in his suit No. 235A/2015 had allowed an application filed under Order 39 Rule 1 & 2 of CPC by order dated 11.08.2015 (Annexure P/5), however, prior to said order, the petitioner had filed an application under Section 10 of CPC for staying the subsequent suit filed by the respondent/defendant as matter in issue is directly and substantially identical in both the suits. The said application filed by the petitioner/defendant in the suit of the respondent/plaintiff has been allowed vide order dated 18.08.2015 (Anneuxre P/4). It is submitted that the petitioner had also filed an application in her suit No.1021A/2014 for



temporary injunction but same has been dismissed on the ground that in the later suit filed by the respondent/defendant, stay has been granted in favour of respondent/defendant and there arose an anomaly and conflict that in the suit of respondent/defendant, interim injunction has been granted but in the suit filed by the petitioner/plaintiff the same has been rejected on the ground that in the later suit the stay has been granted in favour of respondent/plaintiff. It is the case of the petitioner that because of such anomaly and conflict, the petitioner's rights are substantially affected because the respondent/defendant is enjoying the stay against the petitioner/plaintiff and also creating third party right in the suit land. It is the case that the petitioner/plaintiff has also filed the previous suit and averred that the respondent/defendant has no title on the basis of the forged power of attorney. The petitioner/plaintiff is restrained but respondent/defendant is creating third party right in the suit land which may prejudice the interest of petitioner/plaintiff and also create multiplicity of the litigation.

4. Considering the difficulty and anomaly because of the stay granted in the later suit, the petitioner had filed an application under Section 151 of CPC dated 09.09.2024 for recalling of the earlier order dated 18.08.2015 passed on an application under Section 10 of CPC of which reply has been submitted by the respondent vide Annexure P/8 but the same has been dismissed by the civil court vide order dated 13.01.2025 Annexure P/9. Being aggrieved by the said order, the petitioner has filed the present petition.

5. It has been contended by learned senior counsel that under the



inherent powers the Court has the jurisdiction to recall the order and try both the suits analogously. It is further submitted that because of one sided order in a later suit, the petitioner's/plaintiff's application for temporary injunction has been denied, but, on the other hand, the respondents/defendants are creating third party right, therefore, both the suits are required to be tried together. But, the learned Court below, without appreciating the factual matrix of the case, has dismissed the application, therefore, prayed for quashment of order dated 13.01.2025 (Annexure P/9).

6. To bolster his submissions, learned senior counsel has relied on the judgment passed by the Hon'ble Apex Court in the cases of *K.K.Velusamy vs. N.Palanisamy (2011) 11 SCC 275*, *Budhia Swain vs. Gopinath Deb (1999) 4 SCC 396* and order of Coordinate Bench of this Court passed in *M.P.No.600/2019 (Smt. Pooja Soni vs. Dinesh Kumar) dated 12.11.2021* to state that recalling is the inherent power of the Court and same should be exercised when (i) *the proceedings culminating in the order suffers from inherent lack of jurisdiction which is patent; (ii) fraud or collusion has been used in obtaining the judgment, (iii) there has been a mistake by the Court prejudicing a party; or (iv) a judgment has been render in ignorance of the fact that a necessary party has not been serve at all or had died and State was not represented. It is submitted that the present case is covered in condition No.(iii) and therefore, prayed for the recalling of the order.*

7. It is submitted that in similar facts and circumstances, this Court in M.P.No.600/2019 had directed the Court to consolidate two suits, the subject matter of that petitions, to avoid multiplicity of the proceedings and



accordingly prayed that the impugned order be quashed and necessary directions be issued under the supervisory jurisdiction of this Court.

8. Per contra, learned counsel for the respondent has submitted that the order passed by the learned Court below is absolutely in consonance with the law and the procedure. The Court below cannot recall the earlier order passed under Section 10 of CPC staying the proceedings of the later suit because such application was filed by the petitioner/plaintiff himself and on the application the proceedings have been stayed. It has further been submitted that the power of recall is governed by the principles of review provided under Order 47 Rule 1 of CPC and section 114 of CPC and therefore, even if the nomenclature of the application is 151 of CPC but the principle to recall the order would be applicable of the review as provided under Order 47 Rule 1 of CPC and section 114 of CPC and accordingly prayed that the application has rightly been rejected by the learned Court below. To buttress his submission, learned counsel has relied on judgment of Hon'ble Apex Court dated 16.01.2008 passed in Appeal (Civil) 453-455/2008.

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

10. Before advertng to the facts and law of the present case, this court finds it necessary to dwell upon the principle , power and jurisdiction of the High Court under Article 227 of the Constitution of India. The Hon'ble Apex Court in the case of Chitra vs. Shashi Kumar (2025) Supreme Online SC 3164 has held that the power of the High Court is supervisory and is exercised to ensure Courts and tribunals stay under its supervision within the limits of their jurisdiction conferred by law. This power is to be exercised



sparingly, when the limits of their jurisdiction conferred by law are crossed , where errors are apparent on the face of record, occasioning grave injustice by the Court or tribunal assuming jurisdiction which it does not have, failing to exercise jurisdiction, which it does have, or exercise its jurisdiction in a perverse manner.

11. Similarly, it is held that essence of the power under Article 227 of the Constitution of India being supervisory, it cannot be invoked to usurp the original jurisdiction of the Court which it seeks to supervise, nor can it be invoked to supplant statutory legal remedy under the Code of Civil Procedure, 1908. For example, existence of appellate remedy under Section 96 of the Code operates as a total bar to exercise supervisory jurisdiction under Article 227 of the Constitution of India. [See. *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society* (2019) 9 SCC 538].

12. Hon'ble Apex Court in the case of *Shamshad Ahmad v. Tilak Raj Bajaj* (2008) 9 SCC 1, has held :

*"38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and*



*inferior tribunals within the limits of law."*

13. A Division Bench of this Court in Writ Petition No. 561/2008 (Mahesh Kumar Jha vs. Union of India and Others) decided on 03.12.2019 has held :

*"11. The power vested under Article 227 is obviously the power of superintendence as stated in the Article in so many words. But, on the other hand, while acting under Article 227, the Court is not so much concerned with the enforcement of the legal rights of the parties as with the discharge of its own obligation irrespective of the rights of the parties.*

*12. Supervisory jurisdiction under Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the Armed Forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by sub-Articles (2) and (3) of Article 227. It is well-settled that the power of superintendence conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court under Article 226. That means the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.*

*13. The history of supervisory jurisdiction exercised by the High Court, and how the jurisdiction has culminated into its present shape under Article 227 of the Constitution, was traced in Waryam Singh & Anr. Vs. Amarnath & Anr. (1954) SCR 565. The jurisdiction can be traced back to Section 15 of High Courts Act 1861 which*



*gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisionsal jurisdiction on the High Court. Section 107 of the Government of India Act 1915 and then Section 224 of the Government of India Act 1935, were similarly worded and reproduced the predecessor provision. However, sub-section (2) was added in Section 224 which confined the jurisdiction of the High Court to such judgments of the inferior courts which were not otherwise subject to appeal or revision. That restriction has not been carried forward in Article 227 of the Constitution. In that sense Article 227 of the Constitution has width and vigour unprecedented."*

14. Now, analyzing the facts of the present case, to entertain the present petition and pass appropriate order under supervisory jurisdiction, it is found that the petitioner had filed an application under Section 10 of CPC for staying the proceedings of the later suit No.235A/2015, said application was allowed and vide order dated 18.08.2015, the Court has found that the matter of subsequent suit is directly and substantially identical with the earlier suit and stayed the proceedings of the subsequent suit. The petitioner by way of application under Section 151 of CPC on suffering difficulty of non-granting the temporary injunction in favour of the petitioner/plaintiff because of the orders passed on an application under Order 39 Rule 1 & 2 of CPC in a subsequent suit has filed an application for recalling the earlier order. The said application has been dismissed vide impugned order holding that as the proceedings of the earlier court is not known to the court adjudicating later suit, therefore, such application has been dismissed.

15. From the perusal of the order, it is apparent that the Court has not opined anything on the merits of the case, whether such application under





Section 151 of CPC in guise of the review is maintainable or not ? If maintainable, whether the relief sought by the petitioner in the application can be granted or not ?

16. It is apparent from the order that the Court has not exercised its jurisdiction and just passed an order without considering anything on the ground that the proceedings of the former suit is not known. For deciding such application which is a recall application, the principle of review is to be applied. If such remedy is available and can be allowed, then Court has to see the parameters and by applying its mind pass an appropriate order, however, the Court has not passed any order on the merits of the case.

17. It is a trite law that if by the orders the proceedings are not culminating into any result and prejudicing the rights of the parties, then the Court should exercise its jurisdiction to recall such an order. It is found that even if the nomenclature of the application is Section 151, then looking to the reliefs, the application seems to review the earlier order. The order passed under Section 151 of CPC or order passed under the review jurisdiction would be assailed by filing petition under Article 227 of the Constitution of India. Similarly, any order passed under Section 10 of CPC being an interlocutory order is always challenged in the supervisor jurisdiction enshrined under Article 227 of the Constitution of India because all these proceedings as discussed hereinabove do not disposed of the proceedings, and, therefore, not revisable. The review of the original decree may not be assailed under the supervisor jurisdiction of this Court, but as against the original decree there is a substantive remedy of an appeal, but in



the present case in hand, all the orders under Section 10 of CPC and under Section 151 CPC in the guise of review are challengeable under the supervisory jurisdiction of this Court. Therefore, this Court is of the considered opinion that order passed by the Court below under Section 10 of CPC and on the application filed under Section 151 of CPC can be corrected if they fall within the parameters of the supervisory jurisdiction of this Court.

18. This Court finds that when the petitioner/plaintiff had filed an application under Section 10 of CPC, the Court below ought to have directed for consolidation of the suits as factual backdrop and relief sought in both the suits are similar. The matter in issue is directly and substantially identical as both the parties are claiming right and title over the land in question and the transfer to be valid/invalid. Therefore, the evidence of the both suits would be similar and to avoid unnecessary contradiction and inconvenience to the parties, which may lead to multiplicity of the litigation, the Court ought to have directed for consolidation of the suits in place of staying the suit.

19. The Code of Civil Procedure, however, does not provide for a specific procedure for consolidation of the suits. Consolidation of the suits is a power vested with the Courts either with the consent or without the consent of the parties known to the law and to prevent delay and unnecessary expenses of the parties.

20. The Hon'ble Apex Court in the case of *Prem Lala Nahata vs. Chandi Prasad Sikaria* (2007) 2 SCC 551, has held :

*“it cannot be disputed that the court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The*



*main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits. (See Halsbury's Laws of England, Volume 37, paragraph 69). If there is power in the court to consolidate different suits on the basis that it should be desirable to make an order consolidating them or on the basis that some common questions of law or fact arise for decision in them, it cannot certainly be postulated that the trying of a suit defective for misjoinder of parties or causes of action is something that is barred by law. The power to consolidate recognised in the court obviously gives rise to the position that mere misjoinder of parties or causes of action is not something that creates an obstruction even at the threshold for the entertaining of the suit”.*

21. The object of consolidation of suits is to avoid multiplicity of proceedings and unnecessary delay and protraction of litigation. These objects are not in any way in conflict with the objects of Section 10 of CPC. On the contrary, consolidation of suits promotes such objects. Hence, a court has inherent power to consolidate suits between the same parties in which the matter in issue in both the suits substantially the same. Section 10 of CPC was never intended to take away the inherent power of the Court to consolidate for the interests of justice. The Court may, however, refuse to consolidate suits if it would be against public policy and encourage multiplicity of proceedings. [See Indian Bank Vs. Maharashtra State Co-operative Marketing Federation (1998) 5 SCC 69, Desh Bhushan vs.



Mahajan 1997 AIHC 2530 and Anand Deep Vs. Ranjeet Kaur AIR 1992 DL 87].

22. Considering the principle of law laid down by the Hon'ble Apex Court and various courts on the consolidation of suits, this Court finds that in the backdrop of the present case, the Court below ought to have consolidated the suits but as the Court has already ordered for stay of the proceedings of the later suit vide order 18.08.2015 Anneuxre P/4, the Court should have applied the mind in consonance of law and decided such application considering the aforesaid analysis of law and decided the application but the learned court below without dealing with the application has dismissed the application without considering the merits of the case in a cursory manner vide impugned order, therefore, impugned order does not qualify the test of judicial scrutiny and is hereby quashed.

23. The matter is remanded back to the Court below to decide the application under Section 151 of CPC in the aforesaid matrix of the case and law as discussed hereinabove. In case, the Court finds that both the suits are pending before the Court not having the equal jurisdiction then, the matter may be placed before the District Judge for appropriate orders while dealing with the application under Section 151 of CPC.

24. With the aforesaid, the petition is disposed of.

**(DEEPAK KHOT)**  
**JUDGE**