

**IN THE COURT OF SH. KISHOR KUMAR, DISTRICT
JUDGE-04, NORTH DISTRICT, ROHINI COURTS,
DELHI.**

CS No. 59539/2016

Nirmal Kumar Jain

..... Plaintiff

VERSUS

Pankaj Jain

.....Defendant

Order/18.04.2024

1. Vide this order I shall dispose of application under Order I Rule 10 and Order 22 Rule 10 read with Section 151 CPC, moved on behalf of plaintiff, for impleadment of proposed defendants no.2, 3, 4 and 5 in the array of parties.

2. The plaintiff has filed the present suit against the defendant for recovery of damages of Rs.21,00,000/- for causing damage to the house of plaintiff and for mandatory, prohibitory and permanent injunction stating inter alia that in the end of February, 2014, the defendant started immense repairs, erection and reconstruction in his property as a result of which heavy damage was caused to the property of the plaintiff.

3. By way of present application, it is contended on behalf of the plaintiff that in the month of April, 2023, the plaintiff came to know that the suit property has been sold to Sh. Harinder Pal Singh and Smt. Manjeet Kaur. In view of this, it is prayed that proposed defendants i.e. Smt. Sweety Chopra, Sh. Rajat Tandon, Sh. Harinder Pal Singh and Smt. Manjeet Kaur be impleaded as defendants in the present suit for effective adjudication of the present suit.

4. The defendant, in reply to the present application, has denied the grounds taken by the applicant being wrong and incorrect. It is stated that due to the eccentric and quarrelsome behaviour of the plaintiff, the defendant and his family were compelled to shift to another residence. It is prayed that present application deserves to be dismissed with cost.

5. I have heard learned counsel for the parties and have carefully gone through the material available on record.

6. In the present suit, the plaintiff has prayed for passing decree of damages to the tune of Rs.21,00,000/- against the defendant along with other reliefs. As per the prayer clauses, reliefs are sought against the present defendant. All the allegations made against only the present defendant.

7. By way of present application, it is contended on behalf of the plaintiff that since the suit property has been sold to the proposed defendants, they are necessary parties to the present suit. The original defendant, on the other hand, denied the averments made in the instant application.

8. The principles governing the power of the court under Order 1, Rule 10 of CPC, are that as a rule, the court should not add a person as a defendant in a suit if no relief is sought against such person.

9. A person is a necessary party when in the absence of whom relief claimed in the suit cannot be granted. A necessary party is against whom the relief is sought and without whom no effective order can be passed. Proper parties are those whose presence may be necessary with a view to fully adjudicate upon the matters involved in the suit. In ***Kasturi vs. Uyyamperumal and others (2005) 6 SCC 733***, the Hon'ble Apex Court provided two tests that are to be satisfied for determining the question that who amounts to a necessary party:

- (i) there must be a right to some relief against such party in respect of the controversies involved in the proceedings,
- (ii) no effective decree can be passed in the absence of such a party.

10. The theory of dominus litus should not be over stretched in the matter of impleading of parties, because it is the duty of

the court to ensure that if for deciding the real matter in dispute, a person is necessary party, the court can order such person to be impleaded. In the case in hand, the plaintiff has sought relief against the defendant for the damage caused by him. The proposed defendants, in such circumstances, cannot be considered as necessary party since they have occupied the property of original defendant much after the alleged damages as claimed by the plaintiff. It is between the original defendant and the proposed defendants to resolve their issues, if any, arose out of the outcome of present suit. Further, there is no privity between the plaintiff and the proposed defendants. Perusal of plaint shows that plaintiff has not sought any relief of any kind whatsoever from the proposed defendants.

11. In view of my above discussion, the application Order I Rule 10 and Order 22 Rule 10 read with Section 151 CPC, moved on behalf of plaintiff is dismissed.

12. Application stands disposed of accordingly.

Announced in Open Court

On Dated 18.04.2024.

(Kishor Kumar)
DJ-04, North, Rohini Courts,
Delhi/18.04.2024