

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

CS No. 400/2021
CNR No: DLNT01-005882-2021

Kapil Sharma

..... Plaintiff

VERSUS

Poonam Bhutani & Ors.

.....Defendants

Order/23.09.2024

1. Vide this order I shall dispose of application under Order I Rule 10 read for discharge of defendant no.3 from the array of parties.

2. It is stated on behalf of defendant no.3 that plaintiff has filed the present suit for specific performance and recovery of damages against the defendant no.1 and 2 as they are the actual owner of the suit property and agreement to sell is also executed between plaintiff and defendant no.1 and 2. It is further submitted that defendant no.3 is neither the party to the contract nor a witness thereto. It is prayed that defendant no.3 may be

discharged from the array of parties.

3. The plaintiff did not file any reply to the present application despite ample opportunities being granted to the plaintiff to file reply. However, in reply to the present application, it is contended on behalf of defendant no.1 and 2 that there are specific averments/allegations against the defendant no.3 in the plaint and there do exists cause of action against the defendant no.3. It is prayed that application deserves to be dismissed.

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

5. It is a well-settled principle that it is for the plaintiff in a suit to bring the parties against whom he has any dispute and to implead them as defendants in the suit filed for necessary relief. Further, 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 cannot be passed. 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.

6. The plaintiff has filed the present suit against all the defendants stating specifically inter alia that he was approached by defendant no.3 and 4 who are property dealers and allured him to assume that the property is allotted to defendant no.1 and she is the sole and absolute owner of the suit property. It is further stated by the plaintiff that on the insistence of defendant no.3 and 4, the plaintiff met defendant no.1 and 2. It is further stated that on the assurance of defendant no.3 and 4 along with other defendants, plaintiff agreed to purchase the suit property and executed agreement of sale and purchase. It is further averred that payment of consideration amount was made by the plaintiff in the office of defendant no.3.

7. Perusal of all these averments clearly shows that there are specific averments/allegations against the defendant no.3 with regard to the transaction in question. In these circumstances, it is evident on record that defendant no.3 is the necessary party and without whom relief sought cannot be granted, if plaintiff succeeds in the case. Hence, at this stage, it cannot be said that defendant no.3 should be discharged from the array of parties.

8. In view of my above discussion, the application under Order I Rule 10 CPC, moved on behalf of defendant no.3, for its deletion from the array of parties stands dismissed.

9. Application stands disposed of accordingly.

Announced in Open Court

On Dated 23.09.2024.

(Kishor Kumar)
DJ-04, North, Rohini Courts,
Delhi/23.09.2024