

**IN THE COURT OF SH. RAMESH KUMAR-II,
ADDITIONAL DISTRICT JUDGE-01, SHAHDARA
DISTRICT, KARKARDOOMA COURTS,
DELHI**

CS No. 336/19

In the matter of:-

Sh. Mohit Kumar Goyal

.....Plaintiff

Vs.

Smt. Manjeet Kaur

.....Defendant

23.11.2023

ORDER

Vide this order I shall dispose off the application of the plaintiff under Order 1 rule 10 read with Section 151 CPC for adding/impleading Punjab National Bank, Radheypuri Branch, Delhi-51, as defendant no.2 in the present suit.

Brief facts as stated by the plaintiff in the present application are that the defendant has filed written statement in the present case, in which it is alleged by her that she had availed a cash credit limit of Rs.3,60,00,000/-, vide cash credit limit account no. 0649008700203539, from the Punjab National Bank, Radheypuri Branch, Delhi-110051, against the mortgaged property bearing no. E-3, Sector-A-5 and 6, Tronica City, Ghaziabad, (UP) and built-up property/house bearing no. 27/103, D3A, Jwala Nagar, Vishwas Nagar, Shahdara, Delhi-110032, apart from the portion i.e. 30.10 Mtrs. (36 Sq. Yards) sold to

him. It is also alleged by the defendant in her written statement that the property bearing no. 27/103, D3A, Jwala Nagar, Vishwas Nagar, Shahdara, Delhi-110032 is admeasuring 250 sq. yards, out of which 213 sq. yards is mortgaged with the aforesaid bank and rest of the 30.10 Mtrs. (36 Sq. Yards) is sold to the plaintiff by her. It is further alleged by the defendant in her written statement that she is ready to partition and to give share of the plaintiff to him, after making wall on the first floor and second floor in the part/portion of the suit property i.e. measuring 30.10 Mtrs. (36 Sq. Yards), out of her property/House bearing no. 27/103-D-3, Jwala Nagar, Shahdara, Delhi-110032, with the permission of the Punjab National Bank, Radheypuri Branch, Delhi-110051, as rest of the property is lying mortgaged with them and she cannot partition the same in any manner without their permission/ authority. It is further averred that as per the written statement of the defendant, she has no objection for partition of the suit property, but as rest portion of the suit property is lying mortgaged with Punjab National Bank, Radheypuri Branch, Delhi-110051, therefore, now it is necessary to make them party in the present suit for fair and proper disposal/adjudication of the present suit. Accordingly, a prayer is made to allow the present application thereby impleading the Punjab National Bank, Radheypuri Branch, Delhi-51, as defendant no.2 for fair and proper disposal of the present suit.

No reply to this application has been filed on behalf of defendant and proposed defendant.

Ld. Counsel for defendant submitted that he does not want to submit anything on the application of the plaintiff.

I have heard the arguments on behalf of plaintiff and

proposed defendant.

During the course of arguments, ld. Counsel for plaintiff argued and submitted that the defendant in her written statement has stated that she has no objection for partition of the suit property, but as rest portion of the suit property is lying mortgaged with Punjab National Bank, Radheypuri Branch, Delhi-110051, hence now it is necessary to make the said Bank party in the present suit for fair and proper disposal/adjudication of the present suit. Hence, ld. Counsel for plaintiff requested to allow the present application.

Per contra, Ld. counsel for proposed defendant strongly opposed the application of the plaintiff, submitting that the plaintiff has admitted in his application that he has purchased 36 sq. yards in the suit property from the defendant. He further submitted that the property in question has not yet been partitioned, despite that defendant has sold the undivided share of the property in question to the defendant without taking prior permission of Punjab National Bank. He further submitted that since the property in question is lying mortgaged with PNB and since the said property has yet not been partitioned, therefore, the present suit of the plaintiff is not maintainable at this stage. He further submitted that proposed defendant is not a necessary party to the present suit. Hence, ld. counsel for proposed defendant requested to dismiss the application of the plaintiff with cost.

I have considered the submissions made on behalf of the parties.

The plaintiff intends to implead Punjab National Bank as a defendant no.2 in the present suit being a necessary party as

property in question has been mortgaged by the defendant with the bank. It is a settled law that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. The defendant has also categorically averred in her written statement that she is ready to partition and give share of the plaintiff to him in suit property but the Punjab National Bank, Radheypuri Branch, Delhi is a necessary party as rest of the property is lying mortgaged with them and defendant cannot partition the same in any manner without their permission. If the Punjab National Bank is not impleaded as defendant no.2 in the present suit, then no effective decree could be passed at all by the court. Therefore, this court is of the opinion that the presence of the Punjab National Bank would help to adjudicate the matter completely and effectively. Therefore, the application of the plaintiff under Order I Rule 10 read with Section 151 CPC is hereby allowed. Punjab National Bank, Radheypuri Branch, Delhi is impleaded as defendant no.2 in the present suit.

Plaintiff is directed to file amended memo of parties next date of hearing.

Application of the plaintiff is disposed off accordingly.

(Typed to the dictation directly, corrected and pronounced in open court on 23.11.2023).

(RAMESH KUMAR-II)
ADJ-01/SHD/KKD COURTS
DELHI