

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

CS No.264/2018

In the matter of:-

Smt. Urmila Devi

.....Plaintiff

Versus

Sh. Bhanu Sharma & Ors.

.....Defendants

09.11.2023

ORDER

Vide this order I shall dispose off the application filed on behalf of defendant no.10 under Order I Rule 10 (2) CPC to strike out his name from the suit.

Brief facts as stated by the defendant no.1 in the present application are, that the present suit is filed on the basis of transactions made by the plaintiff for purchasing the property bearing no.1/3481, Gali No.6, Tyagi Colony, Ram Nagar Extension, Shahdara, Delhi-110032 but the sale deed could not be registered with Sub-Registrar because there is a stay on the property in question vide order dated 02.08.2016 issued by Ld. ADJ, Shahdara, KKD Court, Delhi. It is further averred that the applicant/defendant no.10 is mere an advocate/deed writer who drafted the sale deed of the property in question and presented before the Sub-Registrar-IV but the same was rejected by him on the above-mentioned grounds vide order dated 23.08.2016. It is

further averred that the defendant no.10 has no concern with the property, never entered into any agreement with the plaintiff, never received any amount from the plaintiff, hence, he is not a necessary party to the suit. Therefore, he may kindly be strike out from the present suit as not necessary party to the suit.

No written reply to this application has been filed on behalf of the plaintiff.

I have heard the arguments on behalf of parties on application under Order I Rule 10 (2) CPC.

Ld. Counsel for plaintiff has also filed written submissions in support of his averments.

During the course of arguments, ld. counsel for defendant no.10 argued and submitted that the suit has been filed on the basis of transactions made by the plaintiff for purchasing the suit property but the sale deed could not be registered with sub registrar because there is a stay on the property in question vide order dated 02.08.2016 issued by Ld. Addl. District Judge, Shahdara, KKD, Delhi. Ld. counsel for defendant no.10 further submitted that the applicant/defendant no.10 is merely an advocate/deed writer who drafted the sale deed of the property in question and presented before the sub registrar IV but the same was rejected by the sub registrar on the above mentioned ground vide order dt. 23.08.2016. Ld. counsel for defendant no.10 further submitted that the applicant/defendant no.10 has no concern with the property, never entered into any agreement with the plaintiff, never received any amount from the plaintiff, hence the applicant/defendant no.10 is not a necessary party to the suit and therefore, it is prayed that applicant/defendant no.10 may kindly be strike out from the present suit as not necessary party

to the suit.

Per contra, it has been argued on behalf of the plaintiff that the present application is not maintainable and liable to be dismissed being malafide, dishonest and abuse of the process of law. Ld. counsel for plaintiff further submitted that the present application is also not maintainable and liable to be dismissed as well-know principles of "dominus litis" is regarded as cardinal principle in respect of implement of parties, which provides that the plaintiff is master of the suit and thus may choose the person against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Ld. Counsel for plaintiff further submitted that the proceedings of this case can be disturbed and hampered if the defendant no.10 is struck out as he is a necessary party in this particular matter and without him the suit cannot be reached at the final stage. Ld. Counsel for plaintiff further submitted that the party who is defendant no.10 in this suit is a necessary party and not a proper party and the defendant no.10 who wants to strike out from this case deliberately which is very unfair and unjust for the court and the plaintiff being "dominus litis" can only decide which party can be add or remove and here in this suit the defendant no.10 is a necessary party hence his presence is mandatory for this case and as such the present application of defendant no.10 is liable to be dismissed. Ld. Counsel for plaintiff further submitted that in the present case the defendant no.10 is necessary party and cannot be removed because he is the deed writer who drafted the sale deed of the property in question and presented after receiving a sum of Rs.1,24,000/- but despite objections of the plaintiff and her husband and son in order to

avoid the stamp duty by their own, shown in the sale deed, the less sales consideration against the consent of the son of the plaintiff. Ld. Counsel for plaintiff further submitted that the defendant no.10 has directly concern with the disputed property, and with the conspiracy of other defendants he played falsely and malafidely and cheated the plaintiff and further, defendant no.10 had directly received the stamp duty but did not pay to the registrar office, due to which the registry of the said property was not transferred in the plaintiff's name. On the abovesaid grounds, ld. Counsel for plaintiff requested to dismiss the present application of defendant no.10 with exemplary costs.

I have considered the submissions made on behalf of the parties in support of the respective averments.

Section 1 Rule 10 Sub Rule 2 CPC says that if the party to the suit is not required for the disposal of the case on merits and no relief has been claimed against him/her, then, his/her name can be struck off/deleted from the arrays of the parties. In the present case, however, the plaintiff has specifically assigned the role of the defendant no.10 stating that the defendant no.10 is necessary party and cannot be removed because he is the deed writer who drafted the sale deed of the property in question and presented after receiving a sum of Rs.1,24,000/- but despite objections of the plaintiff and her husband and son, in order to avoid the stamp duty by their own, shown in the sale deed, the less sales consideration against the consent of the son of the plaintiff. All these facts clearly show that the defendant no.10 is a necessary party to decide the real controversy between the parties and the reliefs are claimed from the all the three defendants. 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. If the defendant no.1 is deleted from the array of defendants, then no effective decree could be passed at all by the court.

In view of the above discussion, this court is of the considered opinion that that defendant no.10 is a necessary party to the suit as the plaint is disclosing the sufficient cause of action against him. Therefore, his presence is very much required for disposal of the case on merits. Accordingly, the application of the defendant no.10 under Order 1 rule 10 (2) CPC is not maintainable and the same is hereby dismissed.

The application stands disposed off accordingly.

(Typed to the dictation directly, corrected and pronounced in open court on 09.11.2023).

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