

20 CS 1830/16

**VIKAS BHARATDWAJ Vs. M/S. CAPITAL LAND BUILDER
PVT. LTD**

**17.04.2025
AT 02:05 PM**

One regular Stenographer is on medical leave. No substitute stenographer has been provided.

Present: Sh. Arjun Singh Bhati and Sh. Sajal Sinha, Ld.
Counsels for plaintiff along with plaintiff in person
Sh.Sukhbir Singh, Ld. Counsel for D-1 and D-2
None for D-3(Stated to have expired).
Sh. Tapan Rajora, Ld. Proxy Counsel for Sh. R.N.
Dubey, Ld. Counsel for D-4 and D-8.
Ms. Mukta Garg, Ld. Counsel for D-5.
None for D-6.
None for D-7.
Sh. Shalabh Gupta and Ms. Himani Aggarwal, Ld.
Counsel for intervener/applicant along with AR
Manoj Bansal in person

1. Arguments heard on the application under Order I Rule 10 r/w Section 151 CPC filed on behalf of applicant/proposed defendant namely M/s Capital Land Builders Pvt. Ltd. having its registered office at 5/1, Doctors Lane, Gole Market, New Delhi-110001 through its AR Sh. Manoj Bansal, as defendant.

2. During the course of arguments, Ld. Counsel for plaintiff on instructions submits that plaintiff has no objection, if the aforesaid application under Order I Rule 10 r/w Section 151 CPC be allowed. He further submits that as per the case of plaintiff, defendant No.2 is one of the Director of defendant No.1 company and wife of defendant No.3 (who is one of the Principal Director of defendant No.1 company). It is further submitted that defendant No.4 to 7 approached plaintiff No.1 in the first week of March, 2014 with a proposal to enter into a transaction for purchase of property bearing No.A-37 situated at Kailash Nagar Colony, Loni Road, Shahdara, Delhi-110093 through them from defendant No.1 company. It is further submitted that plaintiffs on the representation of defendants No.4 to 7 purportedly on the instructions of defendant No.1 company through its Directors agreed to enter into a transaction in respect to aforesaid property with defendant No.1 and accordingly a registered sale deed dated 03.04.2014 was entered/executed between plaintiffs and defendant No.1 company through its Director i.e. defendant No.2 for a total sale consideration amount of Rs.1.30 crores, however, the sale consideration was mentioned as Rs.40 lakhs in the said sale deed. It is further argued that plaintiff has paid Rs.1.30 crores in following manner:

1. *A property/flat bearing No.66, Third floor, Gali No.8, Balbir Nagar Extension, Shahdara, Delhi with roof rights was given as an exchange/barter which was valued as Rs.50 lakhs;*
2. *Rs.40 lakhs by way of two cheques bearing No.135598 and 091790 (Rs.20 lakhs each);*

CS 1830/16

**VIKAS BHARATDWAJ Vs. M/S. CAPITAL LAND BUILDER
PVT. LTD**

- : 3 : -

3. *Rs.40 lakhs paid in cash in lieu of the post dated cheques bearing No.686251 and 169204.*

3. It is further submitted that after registration of sale deed dated 03.04.2014, plaintiffs took the possession of the property bearing No.A-37, Kailash Nagar Colony, Loni Road, Delhi. It is further submitted that plaintiffs had received a letter dated 17.03.2015 from Economic Offences Wing of Delhi Police bearing No.586 and 587/R-ACP/Sec.V/EOW/Delhi Police, New Delhi being a notice/summon under Section 160/91 of Cr.P.C. It is further argued that by way of said notice plaintiffs were called to produce the documents and to participate in the investigation of FIR No.742/2014 registered at EOW, Delhi for the offence under Section 420/448/467/468/471/120-B IPC. It is further argued that defendants No.2 to 7 with a pre-mediated mind and conspiracy sold the property bearing No.A-37, 267 sq. yards, Kailash Nagar Colony, (East Jyoti Nagar) to plaintiffs by suppressing the factum of litigations (i.e. CS(OS) No.1906/2006) pending before the Hon'ble High Court of Delhi and the restraintment order dated 06.10.2006. It is further submitted that plaintiffs by way of present suit is claiming the relief of permanent injunction, declaration/cancellation and relief of recovery of possession in respect to property/flat bearing No.66, Gali No.8, Balbir Nagar Extension, Nala Paar, Illaqa Shahdara, Delhi-110032 and relief of recovery for a sum of Rs.80 lakhs with interest against defendants. It is further submitted that

plaintiffs have also claimed an alternative prayer for recovery of Rs.50 lakhs in case Court denies the relief of injunction, declaration/cancellation and possession. It is further submitted that plaintiffs have also claimed recovery for a sum of Rs.7,36,000/- along with interest against defendants.

4. Ld. Counsel for applicant/intervener submits that D-2 was having no authority to represent herself as Director of defendant No.1 company and further sale the property bearing No.A-37, Kailash Nagar Colony, Loni Road, Shahdara, Delhi-110093 vide sale deed dated 03.04.2014. He further submits that the sale deed dated 03.04.2014 was executed and registered in contravention/disregard of the order dated 06.10.2006 passed in CS(OS) No.1906/2006 by the Hon'ble High Court of Delhi and order dated 06.11.2009 passed in FAO(OS) No.337/2009 by Divisional Bench of the Hon'ble High Court of Delhi. He further submits that the aforesaid sale deed is a nullity. He further submits that plaintiff by way of present suit is also claiming recovery of Rs.80 lakhs against defendant No.1 company who is actually run and maintained by the applicant/intervener. It is further submitted that if the money decree of Rs.80 lakhs is passed against defendant No.1 company in the present suit, then the same shall be also against the applicant/intervener. He further submits that the applicant/intervener is a necessary party to the present suit and no effective decree can be passed and executed in the absence of applicant/intervener.

CS 1830/16

**VIKAS BHARATDWAJ Vs. M/S. CAPITAL LAND BUILDER
PVT. LTD**

- : 5 : -

5. Ld. Counsel for D-1 and D-2 opposed the contentions and submissions of plaintiffs and applicant/intervener. He further submits that defendant No.1 and 2 have filed an application under Order VII Rule 11 r/w Section 151 CPC prior to filing of the application under Order I Rule 10 r/w Section 151 CPC by applicant/intervener and therefore, the application under Order VII Rule 11 r/w Section 151 CPC is to be decided prior to the adjudication of any other application including application filed by applicant/intervener. He further submits that the application for impleadment filed by applicant/intervener has been filed in connivance with the plaintiffs. He further submits that Ld. Counsel for applicant/intervener himself has stated before this Court that they are supporting the version of plaintiffs in the present matter. It is further argued that the orders dated 06.10.2006 and 06.11.2009 passed by the Hon'ble High Court of Delhi, have been obtained by the applicant/intervener by committing fraud/misrepresentation and by suppressing material facts from the Hon'ble High Court of Delhi.

6. It is settled law that the plaintiff, being dominus litis, may choose the person whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to

be impleaded against the wishes of the plaintiff. However, this general rule is subject to the provisions of order I Rule 10 (2) of CPC which provides for impleadment of necessary parties.

7. The Hon'ble Apex Court in *Kasturi Vs. Iyyampeumal and others*, 2005 (1) Apex Court Judgment 640 (SC): 2005 (2) Civil Court Cases 379 (SC) laid down two tests to determine as to who is a necessary party in a suit are (a) there must be right to some relief against such party in respect of the controversies involved in the proceedings (b) no effective decree can be passed in the absence of such party.

8. It is settled law that Court can add any person who ought to have been joined as party at any stage of the proceedings either upon or without the application of either party. However, court should satisfy that presence of such party before the Court to effectually and completely adjudicate and settle all the questions involved in the suit to avoid multiplicity of litigations.

9. A necessary party is one who ought to have been joined i.e. a person in whose absence no effective decree at all can be passed. A proper party is one whose presence is necessary to enable the Court to effectively and completely adjudicate upon and decide all questions involved in the Court, though he need not be a person in favour or against whom a decree is to be made.

CS 1830/16

**VIKAS BHARATDWAJ Vs. M/S. CAPITAL LAND BUILDER
PVT. LTD**

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10. It is settled law that plaintiff is a master of his own suit. Ld. Counsel for plaintiff has already given 'no objection', for impleadment of applicant/intervener in the present suit. As per the case of the plaintiff, defendant No.2 to 7 in connivance with each other have executed sale deed dated 03.04.2014 in favour of plaintiffs No.1 and 2 in respect to property bearing No.A-37, Kailash Nagar Colony, Loni Road, Shahdara, Delhi-110093 by suppressing the restraintment orders dated 06.10.2006 and 06.11.2009 passed by the Hon'ble High Court of Delhi.

11. It has also come in the notice of this Court during the course of arguments that the applicant/interveners have filed CS(OS) No.1906/2006 before the Hon'ble High Court of Delhi claiming/pleading themselves as the authorized Directors of defendant No.1 company and also assailing/challenging the acts done by defendant No.3 and other persons namely M/s Shaheed Memorial Society, Arjun Choudhary, Ajay Yadav etc., representing themselves to be Director of defendant No.1 company. The Hon'ble High Court of Delhi vide its order dated 06.10.2006 has restrained M/s Shaheed Memorial Society, Arjun Choudhary, Ajay Yadav etc., to further represent themselves as Share Holders/representatives of defendant No.1 company. The interse dispute between the Directors of defendant No.1 company

is pending before the Hon'ble High Court of Delhi in CS(OS) No.1906/2006 and an issue has also been framed in this regard in the said suit.

12. The applicant/intervener filed the present application claiming themselves/itself to be the original/authorized share holders/Directors/representatives of the defendant No.1 company and if they succeeds in CS(OS) No.1906/2006 and/or any decree is passed against defendant No.1 in the present suit then in that case the decree would be executed against the applicant/intervener also. Moreover, if the applicant/intervener is allowed to participate in the proceedings of the present suit, then in that case, it will assist this Court to decide all the controversies involved in the present suit effectually, properly and completely. Considering the factual matrix, this Court is also of the view that no effective decree can be passed in the present matter in the absence of applicant/intervener, therefore, applicant/intervener is a necessary party to the present suit.

13. The contention of Ld. Counsel for D-1 and D-2 that his application under Order VII Rule 11 r/w Section 151 CPC shall be decided prior to adjudication of application under Order I Rule 10 r/w Section 151 CPC, is not sustainable under the law as there is no specific bar to hear and adjudicate the application under Order I Rule 10 r/w Section 151 CPC filed by applicant/intervener prior to adjudication of the application under Order VII Rule 11 r/w Section 151 CPC by defendant No.2.

14. **Considering the facts and circumstances of the case, submissions of Ld. Counsels, no objection given by Ld. Counsel for plaintiffs and above observations, the application under Order I Rule 10 r/w Section 151 CPC filed by applicant/intervener stands allowed.**

15. **Applicant/intervener namely M/s Capital Land Builders Pvt. Ltd. having its registered office at 5/1, Doctors Lane, Gole Market, New Delhi-110001 through its AR Sh. Manoj Bansal, is impleaded as defendant No.9 in the present suit.**

16. **It is made clear that the impleadment of applicant/intervener in the present suit shall not effect the contentions of D-2 made in the present suit as well as in the application under Order VII Rule 11 r/w Section 151 CPC filed by D-2.**

17. **The application is accordingly disposed of.**

18. **D-9 is directed to file WS within 30 days from today with an advance copy to plaintiff.**

19. **At this stage, Ld. Counsel for D-5 on instructions submits that D-5 wants to withdraw his application under Order**

VII Rule 11 r/w Section 151 CPC. She further submits that D-5 shall only press his application under Order I Rule 10 r/w Section 151 CPC for deletion of D-5.

20. In view of the submissions, the application under Order VII Rule 11 r/w Section 151 CPC of D-5 stands dismissed as withdrawn.

21. The application is accordingly disposed of.

22. Put up for arguments on the application under Order VII Rule 11 r/w Section 151 CPC of D-2, application under Order XII Rule 6 CPC of plaintiff, application under Order XXXIX Rule 1 and 2 r/w Section 151 CPC qua D-8 of plaintiff and application under Order I Rule 10 r/w Section 151 CPC for deletion of D-5 on 01.05.2025 at 2:00 PM.

(Deepanker Mohan)
District Judge-04
Shahdara District/KKD Courts/Delhi
17.04.2025