

IN THE COURT OF MS. RAVINDER BEDI
ADDL. DISTRICT JUDGE – 02, SHAHDARA:
KARKARDOOMA COURTS: DELHI.

CS No. 368/2017

Suman Devi v. Vikram Singh & Anr.

22.02.2023

ORDER

- 1) This order shall dispose off an application U/o 1 rule 10 r/w section 151 CPC filed by the applicant namely Sh. Yatender Kumar for his impleadment as a necessary party to the suit.

- 2) The applicant Yatender Kumar states that he had purchased the suit property from Sh. Ramesh Chand on 25.06.2012 vide GPA, Agreement to Sell, Receipt, Possession Letter, Affidavit and Will, all dated 25.06.2012 and he is in physical possession of the property since then. Ld. Counsel Mr. Ram Lal for applicant argues that applicant has also an electricity connection installed at the suit property and is paying municipal house tax. It is argued that the applicant came to know in the month of July 2017 through Process Server from Karkardooma Courts, Delhi, who affixed summons of the present suit in the name of Defendant No.1 at the property and came to know about the pendency of the suit. It is argued that the presence of applicant is necessary for effectual adjudication of the matter.

- 3) Ld. Counsel for Plaintiff has opposed the application with vehemence by submitting that Plaintiff is the registered owner of the suit property as she had purchased the same from previous owner Sh. Babu Ram, who in turn had purchased it from Sh. Naresh Chand. Ld. Counsel refers to the registered title documents, all dated 16.01.2009 as well as the complete chain of transaction since 05.12.1986 to contend that Babu Lal was the owner of the suit property having purchased the same in the year 1986 and had sold the property to Plaintiff on 16.01.2009 and handed over vacant physical possession of same to plaintiff on 16.01.2009 itself. Ld. Counsel submits the applicant is a complete stranger and has never been in possession nor has anything to do with the property in question.
- 4) Ld. Counsel submits that original owner Sh. Naresh Chand had sold the suit property on 05.12.1986 to Sh. Babu Ram and Plaintiff purchased the suit property from Sh. Babu Ram and documents all dated 12.06.2012 relied by applicant being manipulated cannot be relied upon as they are mere SPA/GPA/ATS and related unregistered documents in view of judgment of Hon'ble Apex Court in **Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr** (decided on 11 October 2011). Ld. Counsel has also placed reliance upon the judgment of Hon'ble Apex Court in **Sudhamayee Pattnaik and others v. Bibhu Prasad Sahoo** and others (decided on 16.09.2022).

5) I have heard Ld. Counsel for applicant and Plaintiff, perused the application and looked into the entire record. While deciding the application under Order 1 Rule 10 CPC, the seminal question which falls for consideration is that whether a stranger or a third party to the suit is entitled to be added in a suit for recovery of possession in view of the pre-requisites of Order 1 Rule 10 sub-rule (2) of the CPC. From its bare perusal, it is crystal clear that the court may at any stage of the proceedings as it appears to be just, order to add name of any persons who ought to have been joined or whose presence before the court may be necessary in order the court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

6) Two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party. For deciding the question who is a proper party in a suit, the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit. Thus, the question is to be decided keeping in mind the scope of the suit.

- 7) In the matter of ***Razia Begum Vs. Anwar Begum*** reported in *AIR 1958 SC 886*, the Hon'ble Apex court laid down the following broad principle -

*“(2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;
(3) Where the subject-matter of a litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy.”*

- 8) The basic object of the provision under Order 1 rule 10 CPC as enunciated by Hon'ble Madras High Court in ***Mahadeva Rice & Oil Mills Vs. Chennimalai Gounder*** (*AIR 1968 Mad. 287*) is -

*“1. If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded.
2. It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject-matter which could still have been decided in the pending suit itself;
3. The proposed party has a defined, subsisting, direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognisable in law;”*

9) Coming to the facts of the present matter, plea of the applicant is that he is the owner of the suit property. The applicant was examined under Order 10 CPC by this Court during which he stated that he did not know of its date or month of purchase. He stated that he was not in possession of the property and one relative was residing there now. Admittedly, the applicant was never put into possession after he allegedly purchased the suit property. Moreover, the observations of Ld. JSCC/ASCJ/GJ, North-East in the Judgment dated 18.02.2018 in a suit filed by defendant no.1 against plaintiff and others would indicate that during the relevant time, defendant no.1 was in possession of property and the said suit being only of injunction, question of title was not gone into by Ld. Court. In such an eventuality, the premise taken by applicant of his being owner and in possession is unsubstantiated and he has failed to point any subsistent interest in any manner in the suit property. Therefore the application seeking his impleadment as one of the necessary parties deserves dismissal.

10) The applicant is a complete stranger to the controversy in present suit and therefore, is not a necessary party as effective decree can be passed in her absence. That apart, there is another principle which cannot also be forgotten. The plaintiff who has filed the instant suit for possession is *dominus litus* and cannot be forced to add parties against whom she does not want to fight unless it is a compulsion of the rule of law.

11) For the reasons aforesaid, in my view, the application is not maintainable as applicant is neither necessary nor proper party to the *lis*, and therefore, the same deserves dismissal.

It stands dismissed.

Original documents of applicant is returned to Ld. Counsel Mr. Ram Lal.

Re-list the matter for framing of issues and further proceedings on 15.05.2023.

Announced in the open court.
On 22.02.2023

(RAVINDER BEDI)
Additional District Judge-02,
Shahdara, KKD Courts, Delhi
22.02.2023