

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

CS No. 2073/16

In the matter of:-

Smt. Geeta Tyagi

.....Plaintiff

Vs

Sh. Satya Prakash Sharma

.....Defendant

28.01.2023

ORDER

Vide this order I shall dispose off the application filed on behalf of defendants no.2 and 3 under Order I Rule 10 (2) CPC for striking out their names from the array of defendants.

Brief facts as stated by the defendants in the present application are, that the defendants had raised preliminary objection in para 2 of their written statement that the name of the defendant no.2 and 3 has been improperly joined in the array of defendants by the plaintiff, which has no basis whatsoever as per the averments made in the suit. It is further averred that the plaintiff filed her replication to the written statement of the defendants on 23.02.2017 wherein also the plaintiff has failed to show the basis on which the defendant no.2 and 3 have been arrayed in her suit. Accordingly, a prayer is made to strike out the name of the defendants no.2 and 3 from the array of defendants in the suit, in the interest of justice.

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

Both the parties have filed their respective written arguments on the application under Order I Rule 10 (2) CPC and they submitted that they do not want to say anything else beyond written arguments.

I have gone through the written arguments filed on behalf of the parties and also perused the record.

Order 1 Rule 10 (2) CPC provides that the Court may, at any stage of the proceedings, either upon or without application of either party and on such terms as may appear to the Court to be just, order that the name of any person ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

In written arguments ld. counsel for defendant stated that the defendants had raised preliminary objection in para 2 of their written statement that the name of the defendant no.2 and 3 has been improperly joined in the array of defendants by the plaintiff, which has no basis whatsoever as per the averments made in the suit as well as documents filed with the suit as well as documents filed with the suit. It is further stated that even the forged and fabricated "agreement" filed with the plaint at page no. 15 categorically mention only the name of the plaintiff and the defendant no.1 and the name of defendant no.2 and 3 do not find any mention. It is further stated that the plaintiff filed her replication to the written statement of the defendants on 23.02.2017 wherein also the plaintiff has failed to show the basis

on which the defendant no.2 and 3 have been arrayed in her suit.

Plaintiff in his written arguments stated that there is clear averment in para 2 of the plaint that the defendants are in business of transport and running a firm namely M/s Maa Chamunda Motors and the vehicle in question was given to defendants on 25.06.2006 on the basis of agreement dated 16.06.2006. It is further stated that the defendant no.1 and 2 were dealing with M/s Maa Chamunda Motors (defendant no.3) as they are husband and wife. It is further stated that as per para 15 of preliminary submissions in written statement, it is admitted by the defendants that "defendant no.1 was the proprietor of defendant no.3 which proprietary firm was closed down by the defendant no.1 in the year 2007 itself". This admission/submission of the defendants clearly shows that the defendant no.1 and defendant no.3 are necessary party to decide the real controversy between the parties and the reliefs are claimed from the all the three defendants. It is further stated that the list of documents filed by the plaintiff on dated 14.08.2018 alongwith certain documents i.e. statement of account, copy of orders dated 04.02.2015 and 19.09.2012 in OA No. 253/2012 by DRT-III, Delhi and cross examination of defendant no.1 dated 28.06.2018 in which there is an entry of cheque issued by M/s Maa Chamunda Motors on dated 29.01.2007, in the memo of parties in OA No. 253/2012 and in the cross examination of defendant no.1 dated 28.06.2018, itself shows that defendant no.1, 2 and 3 are necessary parties to decide the real controversy between the parties, hence they are liable to be continued in the proceedings before this court and the present application is liable to be dismissed with heavy cost for delaying the matter with

malafide intention.

I have given consideration to the submissions made by the ld. counsel for the parties and perused the record.

Perusal of the record would show that plaintiff has filed the present suit for recovery of Rs.19,42,076/- against the defendants and it is specifically averred by the plaintiff in para 2 of the plaint that the defendants are in business of transport and running a firm namely M/s Maa Chamunda Motors and the vehicle in question was given to defendants on 25.06.2006 on the basis of agreement dated 16.06.2006. Further, in para 15 of preliminary submissions of written statement, it is specifically stated by the defendants that defendant no.1 was the proprietor of defendant no.3 which proprietary firm was closed down by the defendant no.1 in the year 2007 itself. Defendant no.2 also alleged in written statement that she and her husband i.e. defendant no.1 agreed to help the plaintiff and her husband for the purchase of vehicle and made payment of total amount of Rs.6,06,550/- from her bank account no. SB-13949 to the plaintiff and her husband between 23.05.2006 to 30.05.2006. All these facts clearly show that the defendant no.2 and 3 are necessary party to decide the real controversy between the parties and the reliefs are claimed from the all the three defendants. Further, defendants have already taken a defence in their written statement that the suit is bad for mis-joinder of defendant no.2 and 3 and an issue to that effect has already been framed vide order dated 23.02.2017. It appears that the present application has been filed by the defendants only to delay the matter.

Therefore, in view of above discussion, this court is of the view that the present application filed on behalf of defendants

no.2 and 3 under Order I Rule 10 (2) CPC for striking out their names from the array of defendants do not inspire any confidence of the court and same is accordingly dismissed.

The application stands disposed off accordingly.

(Typed to the dictation directly, corrected and pronounced in open court on 28.01.2023)

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