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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 235/2023**

NITESH AGARWAL & ORS.

.....Plaintiffs

Through: Mr. R.P.S. Sirohi, Mr. Girish Yadav,
Advocates

versus

SHIPU DEVI & ANR.

.....Defendants

Through: Mr. Dharamveer Singh, Advocate for
defendants

Mr. V. P. Rana, Mr. Kunal Mittal,
Mr. Simardeep Singh Kalra,
Advocates for applicant

CORAM:

DR. JAGMINDER SINGH (DHJS) JOINT REGISTRAR (JUDICIAL)

ORDER

% **30.01.2025**

I.A. 6463/2024(by applicant u/O I R 10(2) CPC to implead as defendant)

1. Pleadings are already complete.
2. Arguments heard.
3. It is submitted by learned counsel for applicant that present suit has been filed by the plaintiff seeking cancellation of Sale Deed dated 13.08.2021 qua the suit property with a consequential relief of possession and permanent injunction. The plaintiffs have concealed material facts. Neither plaintiffs nor their predecessor-in-interest are owner of the suit property and in this respect, a civil suit has already been filed by the applicant before the concerned Civil Court at Patiala House Court. The

CS(OS) 235/2023

Page No. 1 of 6



applicant is in exclusive possession of the suit property since 1988. Learned counsel further submitted that earlier there was a dispute over the suit property and thereafter, an understanding was signed between Sh. Aditya Prakash and Sh. Deepak Bhardwaj (father of the applicant) on 05.12.1988 whereby Sh. Aditya Prakash signed a written agreement dated 05.12.1988 through which he agreed to sell the suit property to father of the applicant. He had also executed registered General Power of Attorney in favour of father of the applicant and also handed over earlier original Sale Deed qua the suit property dated 16.09.1988 to the father of the applicant.

4. Learned counsel further submitted that in respect of the suit property and other properties purchased by the father of the applicant, total 9 suits for specific performance and injunctions were filed by Satish Kumar Sood, Raman Kumar Sood and Ajay Kumar Sood on 06.12.1988 claiming that Sh. Inderjeet Singh Bindra had already entered into a contract with them and on this ground, they had challenged the Sale Deed dated 16.09.1988 whereby the suit property was purchased by Sh. Aditya Prakash Aggarwal and other Sale Deeds executed by Sh. Inderjeet Singh Bindra. After death of Deepak Bhardwaj, applicant is having all the documents qua the suit property.

5. Learned counsel further submitted that the Sale Deed executed between plaintiff and defendant is not valid as far as delivery of possession is concerned because physical possession of the property is with the applicant since last about 35 years. The presence of the applicant in the present suit is necessary to dispose of this matter with finality and to avoid any multiple litigations. Therefore, the application may be allowed to the



impleaded as defendant. Learned counsel also referred to a case law in support of his arguments i.e. Udit Narain Singh Malpaharia Versus Additional Member Board of Revenue, Bihar and Another, 1962 SCC OnLine SC 130.

6. On the other hand, learned counsel for plaintiff opposed the application stating that the applicant is neither necessary nor proper party in the present suit. Qua the suit property, the applicant had already filed civil suits before the Courts of competent jurisdictions. As far as present suit is concerned, the plaintiffs have sold the suit property through registered Sale Deed dated 13.08.2021 in favour of the defendant no. 1. The defendant no. 1 issued post dated cheques in furtherance of balance consideration amount of the suit property which were dishonoured. As defendant no. 1 failed to make the payment of full consideration amount of the suit property, he had filed the present suit for cancellation of the Sale Deed. Therefore, the applicant has no role in the suit. The application filed by the applicant is without any merit and is liable to be dismissed.

7. I have considered the submissions of both parties. I have also gone through the contents of the application, reply, rejoinder as well as relevant documents. I have also gone through the relevant case laws.

8. Perusal of plaint reveals that present suit has been filed by the plaintiffs against the defendants for cancellation of the sale deed with consequential relief of possession and permanent injunction. Contents of the plaint reveal that Late Sh. Aditya Prakash Aggarwal purchased the suit property vide registered Sale Deed dated 30.09.1988. After the death of Sh.



Aditya Prakash Aggarwal on 10.01.2011, plaintiffs became owner of the suit land. Thereafter, plaintiffs agreed to sale the suit property to defendant no. 1 for a consideration amount of Rs. 2,40,00,000/-. Accordingly, plaintiffs executed the Sale Deed in question dated 13.08.2021 in favour of defendant no. 1 duly registered in the office of defendant no. 2. Defendant no. 1 had paid a sum of Rs. 99,00,000/- through RTGS and other modes of money transfer to the plaintiffs. With regard to the balance consideration amount of Rs. 1,41,00,000/- , defendant no. 1 had issued 9 cheques in favour of the plaintiffs but when they were presented by the plaintiffs for encashment, all were dishonoured. Thereafter, plaintiffs sent legal notice to defendant no. 1 for making the payment but defendant no. 1 failed to make the payment of balance amount. Therefore, plaintiff had filed the present suit for cancellation of the Sale Deed in question along with consequential relief of recovery of the possession in favour of the plaintiff and against defendant no. 1 and further seeking injunction against the defendant no. 1 restraining from creating any kind of third party interest in the suit property.

9. Perusal of the plaint as well as prayer clause reveals that no any relief has been sought by the plaintiffs against the applicant. Through present application, applicant is alleging his title qua the suit property on the basis of some documents relied upon by him, however, in the present suit, none of the parties is having any concern with any title document of the applicant as present suit is only limited up to the Sale Deed executed between the plaintiff and defendant no. 1 dated 13.08.2021. Moreover, it is admitted by both parties that the applicant already filed civil suits with appropriate relief



regarding his right, title or interest qua the suit property and in few of those suits, defendant is also party. Therefore, matter is already before the competent Court of Law to determine any right, title or interest of the applicant qua the suit property as claimed by him.

10. The subject matter of the present suit is mainly the Sale Deed dated 13.08.2021. Perusal of said Sale Deed reveals that it was executed by the plaintiffs in favour of defendant no. 1, Smt. Shipu Devi qua the suit property. It is mentioned in the Sale Deed that consideration of the suit property was agreed as Rs. 2,40,00,000/- and mode of payment is detailed in Paragraph No. 2 of the Sale Deed wherein there is mention of 9 cheques. As per the plaintiffs, the said cheques were dishonoured and therefore, payment of sale consideration was not completed. Hence, this suit was filed by the plaintiffs for cancellation of the Sale Deed in question. Applicant is neither signatory nor witnessed the said Sale Deed. No any status or role has been attributed by both parties of the Sale Deed to the applicant. Present suit is only regarding the non-payment of complete sale amount in furtherance of the Sale Deed in question by defendant no. 1 to the plaintiffs. Applicant is also not claiming any right or interest over the sale consideration amount exchanged between the defendant no. 1 and plaintiffs. There is no any relief of declaration regarding ownership or possession has been sought by the plaintiffs. Whatsoever the right, title or interest the applicant is claiming over the suit property, the applicant had already filed civil suits with appropriate prayers. It has been observed by the Hon'ble Supreme Court in case ***Udit Narain Singh Malpaharia Versus Additional Member Board of***



Revenue, Bihar and Another, 1962 SCC OnLine SC 130 that:

“A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.”

11. In the present case, it cannot be said that without the applicant no order can be made effectively, therefore, the applicant is not a necessary party. Further, regarding the prayers in the present suit made by the plaintiffs against the defendants, the matter can also be completely and finally decided without presence of the applicant. Therefore, the applicant cannot be said as a proper party. Therefore, in view of the facts and circumstances, the present application moved by the applicant is without any merit and same stands dismissed.

12. The captioned IA accordingly **disposed of**.

CS(OS) 235/2023

13. Right to file written statement of the defendants has already been closed vide order Dated 25.07.2023.

14. Hence, put up before the Hon'ble Court for further directions on 14.02.2025.

DR. JAGMINDER SINGH (DHJS)
JOINT REGISTRAR (JUDICIAL)

JANUARY 30, 2025/sms

[Click here to check corrigendum, if any](#)

CS(OS) 235/2023

Page No. 6 of 6