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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 365/2019, CM APPL. 27167/2019, CM APPL. 52157/2019**

QAMAR JAHAN

.....Petitioner

Through: None.

versus

SHEIKH SULTAN AHMAD WAKF & ANR

.....Respondents

Through: Mr. Sadaat Salim, Adv. for R-1

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **17.02.2025**

1. None appears for the Petitioner.

CM APPL. 8182/2024 [For impleadment]

2. This is an Application filed on behalf of a third-party Applicant seeking impleadment in the present Petition. By way of the Application, the Applicant submits that he has title in the subject property.

3. Learned Counsel for the Respondents submits that the Applicant has already initiated civil proceedings against the Respondents by way of a civil suit bearing CS/SCJ No.941/2024 captioned as ***Babar Ahmed vs. Mohammad Salim.***

3.1 Thus, it is contended by the learned Counsel for the Respondents that the present Application is without any merit and deserves to be dismissed.

4. The jurisdiction of this Court is revisionary in nature and limited in scope. The Supreme Court in ***Abid-Ul-Islam v. Inder Sain Dua***¹ while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the Act has held that this is a conscious



omission. It was held that the High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the face of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The Applicant however seeks an adjudication of his title to the property in the present proceedings.

5. In the case of ***Kanaklata Das v. Naba Kumar Das***; (2018) 2 SCC 352, the Supreme Court has held that in an Eviction Petition, landlord and tenant are the only necessary parties for the decision of the suit and the question of title to the tenanted premises is not germane for the decision of the Eviction Petition.

*“11.1. First, in an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) under the State Rent Act, **the landlord and tenant are the only necessary parties**. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.*

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*11.3. Third, **the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails** to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See Ranbir Singh v. Asharfi Lal [Ranbir Singh v. Asharfi Lal, (1995) 6 SCC 580] .)*

*11.4. Fourth, **the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the***

¹ (2022) 6 SCC 30



defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See Ruma Chakraborty v. Sudha Rani Banerjee [Ruma Chakraborty v. Sudha Rani Banerjee, (2005) 8 SCC 140] .)

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11.6. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, **it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant.** (See Kasthuri Radhakrishnan v. M. Chinnian [Kasthuri Radhakrishnan v. M. Chinnian, (2016) 3 SCC 296 : (2016) 2 SCC (Civ) 331] .)

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13. In our considered opinion, **Respondent 1, who claims to be the co-sharer or/and co-owner with the plaintiff-appellants herein of the suit property is neither a necessary and nor a proper party in the eviction suit of the appellants against Respondents 2 to 5. In other words, such eviction suit can be decreed or dismissed on merits even without the impleadment of Respondent 1.**”

[Emphasis Supplied]

5.1. Further a Coordinate Bench in the case of **Ram Chander v. Ram Pyari**; 2004 SCC OnLine Del 18, has held that the title of the party is always decided through civil proceedings and the claim of the ownership over the tenanted premises can be vindicated by way of filing civil suit and not in the eviction proceedings.

“3. The authority of the Supreme Court relied upon by the learned counsel for the petitioner in *Manoj Kumar v. Bihari Lal (Dead)* by LRs, 91 (2001) Delhi Law Times 25(SC) is not at all applicable in the given facts and circumstances of the case **as any person who denies to be a tenant and claim to be the owner of the premises cannot claim to be granted leave to defend eviction petition as eviction proceedings initiated under the Delhi Rent Control Act cannot be converted into a title suit. The title of the party is always decided through civil proceedings. As such claim of the**



petitioner that he is the owner of the premises and not the tenant could have been vindicated by way of filing civil suit and not in the eviction proceedings.”

[Emphasis Supplied]

6. Quite clearly from the reply filed by the Respondent/landlord, the third-party Applicant has initiated civil proceedings in respect of his claim before a Civil Court. Since the third-party Applicant has already taken alternate remedies before a Civil Court, he is neither a necessary nor a proper party in the present Petition.

7. The present Application is accordingly dismissed.

8. This order however will not come in the way of the civil proceedings filed by the third-party Applicant. Rights and contentions of both parties on that aspect remain open.

RC.REV. 365/2019, CM APPL. 27167/2019, CM APPL. 52157/2019

9. Mr. Ahmad, learned Counsel previously appearing on behalf of the Petitioner submits that arguing Counsel for the Petitioner has passed away and he has no instructions from the Petitioner. He informs the Court that previously he was assisting the Counsel for the Petitioner in this matter and despite several efforts, he has not been able to contact the Petitioner.

10. Issue default Notice to the Petitioner.

11. Learned Counsel for the Respondents requests for some time to file an appropriate application for affixation of user and occupation charges.

12. List on 01.05.2025.

13. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

FEBRUARY 17, 2025/jn

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