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

+ **CS(OS) 363/2020**

BAIDEHI SHAHI

..... Plaintiff

Through: Mr. Shashi Shankar, Adv

versus

RAJESH SHAHI & ORS.

..... Defendants

Through: None

CORAM:

MS. VANDANA JAIN (DHJS) JOINT REGISTRAR(JUDICIAL)

ORDER

% **11.05.2022**

IA No. 3204/2021 (Under Order I Rule 10 CPC filed on behalf of Plaintiff)

Vide this order, I shall dispose off an application under Order 1 Rule 10 CPC moved by plaintiff for impleadment of Mr Harshal Shahi and Ms. Rajni as defendant Nos. 4 & 5 in the present suit.

Learned counsel for plaintiff has argued that this is a suit for Partition, Declaration and Permanent Injunction filed by mother against a son and two daughters in respect of the several movable and immovable properties owned by her late husband alongwith suit for Recovery against defendant No.1.

Learned counsel for plaintiff has argued that after filing of the suit, a written statement was filed by defendant No.1 from which

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plaintiff came to know about the alleged Will executed by husband of the plaintiff-Late Sh K. P. Shahi, wherein the properties have been allegedly bequeathed in favour of proposed defendant No.4.

It is further argued that defendant No.1 had also alleged in the written statement that a registered Agreement to Sell in respect of the house bearing No. G-87, Second Floor, Masjid Moth, Greater Kailash-II, New Delhi had been executed between Kirti Constructions and defendant No.1 and proposed defendant No.5 and therefore, proposed defendant No.5 is the co-owner of this property which is the subject matter of the present suit.

Learned counsel for plaintiff has further argued that plaintiff came to know about the pendency of the Probate proceedings filed by proposed defendant No.4 before the Court of District Judge of Muzaffarpur, Bihar for seeking probate of a alleged Will, only on 23.01.2021 when she received a notice of the same.

Learned counsel for plaintiff has further argued that this fact was not disclosed in the written statement filed by defendant No.1. He has further argued that genuineness of the Will is in question as till the fag end of his life, the husband of the plaintiff late Mr K. P. Shahi had categorically denied the execution of any Will. It was argued that Will has been fabricated and forged in order to usurp the properties of the husband of the plaintiff.

It is further argued that defendant No.1 has himself taken a stand that proposed defendant No.5 is a necessary party to the present

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suit. Learned counsel prays for impleading both of them as parties to the suit.

On the other hand, learned counsel for defendant No.1 who is also appearing for proposed defendant No.5 (wife of defendant No.1) has opposed the application stating that properties which did not belong to husband of the plaintiff have also been made a subject matter of the suit for partition and this objection has been taken by him in the written statement of defendant No.1 itself. He further submits that property at Masjid Moth, G.K-II, New Delhi is a self acquired by defendant No.1 and his wife and has been wrongly included in the list of properties for which a relief of partition is sought by plaintiff.

With respect to the proposed defendant No.4, learned counsel for defendant No.4 has submitted that probate proceedings are pending before the Court of District Judge, Muzaffarpur, Bihar and therefore, defendant No.4 is not necessary party to the present suit as genuineness of the Will has to be decided in the probate proceedings. He has further argued that the suit for Partition has to be adjudicated, subject to the outcome of the Probate Case, therefore, proposed defendant No.4 is neither a necessary nor a proper party to the present suit.

I have heard the arguments of learned counsel for parties and have perused the record carefully.

In the judgment of *Ramesh Hiranand Kundanmal vs Municipal Corporation of Greater Bombay & Ors* passed by Hon'ble Supreme
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Court, it has been observed that:-

1.1. Plaintiff is no doubt dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. The question of impleadment of a party has to be decided on the touch stone of Order 1 Rule 10 of the Code of Civil Procedure, 1908, which provides that only a necessary or a proper party may be added. In the light of the clear language of the Rule, it cannot be said that a person cannot be added as defendant even in a case where his presence is necessary to enable the Court to decide the matter effectively. [6E-F, 7A-D].

1.2. 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. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case. [7A-B]

1.3. The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the Rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order, which is to avoid multiplicity of actions. [7E-F]

1.4. A clear distinction has been drawn between suits relating to property and those in which the subject matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the Commercial interest is



required to be shown before a person may be added as a party. [9E]

1.5. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved that would only make him a necessary witness and not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance.

The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that person must be directly or legally interested in the action in the answer, i.e. he can say that the litigation may lead to a result which will affect him legally, that is, by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. [9F-H, 10A-B]"

With respect to the proposed defendant No.5 (wife of the defendant No.1), it is stated by defendant No.1 himself in the written statement that she is co-owner of the property at Masjid Moth, G.K-II, which is the subject matter of the suit. Though, this is a suit for Partition, however, a relief of declaration has also been sought by plaintiff, praying to declare the title documents, if any, executed in



favour of defendant no.1 or his family members in respect of any of the properties purchased from the earnings and resources of the plaintiff and/or her husband, as null and void, unenforceable and non-est.

Since defendant No.1 has come up with the defence that the property at Masjid Moth is a self-acquired property of defendant No.1 and his wife therefore, defendant No.5 is certainly a necessary and proper party and her impleadment is necessary to adjudicate the case fairly.

Similarly with regard to the proposed defendant No.4, it was argued that defendant No.4 is not a necessary party as he had already filed Testamentary Case and suit for Partition can be decided subject to outcome of Probate proceeding. The contentions of learned counsel for defendant No.4, with respect to the aforesaid proposition of law are not at all in dispute. However, the facts in hand are slightly different from the proposition relied upon by learned counsel for proposed defendant No.4. Had it been a simplicitor suit for Partition in respect of the property for which the proposed defendant no.4 is propounding a Will executed by husband of plaintiff in his favour, the situation would have been altogether different. But in the present case, the plaintiff had additionally sought a decree of declaration declaring the title deeds including any alleged Will, executed by the husband of the plaintiff in favour of defendant No.1 or his family members in respect of any of the properties of her husband as null and void.

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From the relief of declaration as sought about, it prima facie appears that before receipt of the notice of the probate proceedings, she was not aware of the particulars/details of the Will allegedly executed by her husband in favour of his grandson i.e. proposed defendant No.4 and that is why she could not seek that specific relief. As soon as she came to know about the same, she moved an amendment application alongwith present application for impleadment. Thus, proposed defendant No.4 is also a necessary party in the present suit and his impleadment is required for fair adjudication of the suit and for giving the plaintiff, an opportunity to effectively press all the reliefs claimed by her. Hence, both the proposed defendants are allowed to be impleaded as parties to the present suit.

Amended Memo of Parties alongwith IA is taken on record.

IA stands disposed off accordingly.

VANDANA JAIN (DHJS)
JOINT REGSITRAR(JUDICIAL)

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Through: None.

CORAM:

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ORDER

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11.05.2022

Vide separate order passed in IA No. 3204/2021 (under Order 1 Rule 10 CPC filed by plaintiff for seeking impleadment of proposed defendant No.4 & 5 as parties in the present suit is hereby allowed.

IA No. 3203/2021 (Under Order VI Rule 17 CPC filed on behalf of Plaintiff)

Put up for consideration of abovesaid IA on 27.05.2022.

**VANDANA JAIN (DHJS)
JOINT REGSITRAR(JUDICIAL)**

MAY 11, 2022

SK