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

+ CS(OS) 236/2016 & IA Nos. 5993/2016 (under Order XXXIX
Rule 1 & 2 CPC), 1533/2017 (under Order 1 Rule 10 CPC)

SUBODH SINGH Plaintiff

Through Mr. Mahesh Prasad, Advocate

versus

DELHI DEVELOPMENT AUTHORITY & ANR Defendants

Through Mr. M.K.Singh, Advocate for
defendant no.1/DDA

Mr. Rajan Sabharwal, Standing
counsel for respondent no.1/NDMC

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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16.02.2018

IA No. 1533/2017 (under Order I Rule 10 CPC)

1. By this application the applicants, who are legal heirs of deceased Jai Bhagwan Jain, seek to be impleaded in the suit by pleading that they are the owners and have title in the suit property which is subject matter of the suit filed by the plaintiff.

2. A person can be added as a party if he is a necessary or proper party. In the present case the plaintiff does not seek any relief against the applicants and therefore the applicants are not necessary parties. In my opinion, the applicants are also not proper parties. This suit cannot be taken as an off tangent to determine inter-se disputes as to

CS(OS) 236/2016

Page 1 of 4



ownership between the plaintiff and the applicants because the suit has to be tried as per the cause of action in the plaint and as per which plaintiff claims ownership as against the existing defendants being the Delhi Development Authority (DDA) and North Delhi Municipal Council. I may note that contention of the defendant no.2/North Delhi Municipal Council is that it has purchased the suit land from DDA after the same was acquired and possession handed over to DDA.

3. Plaintiff is the *dominus litis*. Plaintiff cannot be forced in a suit to amend the plaint to change the cause of action and reliefs claimed and to change the scope of the suit. In case the applicants claim to be owners of the suit property, then applicants always have right to file independent proceedings to seek declaration of rights of ownership in the suit property.

4. There is no merit in this application which is, therefore, dismissed.

CS(OS) No. 236/2016

5. The suit is listed for framing of issues. Plaintiff claims to be the owner and in possession of the suit property which as per the plaintiff is 300 sq. yards in Khasra Nos. 550/533/469/277 of the Revenue Estate of Village Sadhora Kalan, Delhi. The total area as per the plaintiff of this Khasra was 27 bighas and 10 biswa.

6. Defendants dispute the stand of the plaintiff and plead that the subject land in fact is situated in Khasra No. 533/469/1 and which was acquired as per the Award No.459 dated 25.11.1937.

CS(OS) 236/2016

Page 2 of 4



Possession of the acquired land was taken on 2.12.1937. The subject land was thereafter transferred to Northern Extension City Scheme on 5.4.1941 and a perpetual lease deed dated 22.4.1969 was executed with respect to the transferring land by defendant no.1/DDA to the defendant no.2/North Delhi Municipal Corporation.

7. Issue in the present case therefore really is of demarcation as to where the subject land is situated. If the land is situated in Khasra No. 533/469/1 and is subject matter of Award No.459 dated 25.11.1937, then the plaintiff would have no right to the suit land. If however, the suit land does not form part of Khasra No. 533/469/1 but forms part of unacquired land in Khasra No. 550/533/469/277 then the suit of the plaintiff would be maintainable.

8. Counsel for the parties agree that without prejudice to respective rights and contentions, the concerned revenue officials of the area be directed to carry out demarcation as to where the suit land of 300 sq. yards as claimed by the plaintiff is situated. This demarcation is agreed to be done in the presence of parties and/or their representatives. Plaintiff agrees to bear the costs of the demarcation proceedings. It is also agreed that demarcation will be done by the Total Station Method.

9. Accordingly, let the SDM of the concerned area with respect to the erstwhile village of Sadhora Kalan, Delhi where the suit land is situated, carry out the demarcation by Total Station Method through the Patwari and any other revenue official of the area as required. Plaintiff will deposit the charges for conducting of demarcation by the
CS(OS) 236/2016

Page 3 of 4



Total Station Method with the concerned SDM within a period of six weeks from today. Demarcation be thereafter carried out in terms of the present order by the revenue authorities within a period of eight weeks.

10. It is conceded on behalf of the plaintiff that in case the suit land is found in acquired land in Khasra No. 533/469/1 as is the case of the defendants, then plaintiff will have no right in the suit land, and which land would in fact be acquired land of which possession was taken and that the suit land thereafter was transferred to DDA which transferred the same further to defendant no.2/North Delhi Municipal Corporation.

11. Dasti to counsel for the parties.

12. List for further proceedings on 22nd May, 2018.

VALMIKI J. MEHTA, J

FEBRUARY 16, 2018

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CS(OS) 236/2016

Page 4 of 4