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

+ **CS(OS) 426/2017**

SATISH KUMAR @ SATISH GOYAL Plaintiffs

Through: None

versus

LATA JAIN & ORS. Defendants

Through: Mr. B. S. Mathur, Mr. Rajat Mathur &
Mr. Vaibhav Sinha, Advs for D9 to 11.

CORAM:

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

ORDER

% **02.09.2022**

IA 3149/2020(U/O Rule 10 CPC filed by plaintiff for impleadment of plaintiff No. 2-Mr. Pritpal Singh)

IA 3150/2020(U/O VI Rule 17 CPC filed by plaintiff for amendment of suit)

Vide this order, I shall dispose off the applications under Order Rule 10 CPC filed by plaintiff for impleadment of Mr. Pritpal Singh, as plaintiff No. 2 and Order VI Rule 17 CPC filed by plaintiff for amendment of suit.

The brief facts necessary to decide the applications as averred in the plaint are that in September, 2014, the defendant No.1 to 11 represented by defendant No.5 approached the plaintiff and claimed themselves to be the two of three undivided owners (45% with D1 to 5 and 25 % with D-6 to 11 respectively) of property bearing No. Kothi No. 61, Khasra No. 6123 at Civil Lines Roorkee, Distt Haridwar (hereinafter referred to as suit property). They also

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claimed that the property was leased by the Govt for a period of 90 years and the last renewal of 30 years had expired in 1978 and they had applied for converting the property into freehold. On their assurance, the plaintiff agreed to purchase the aforesaid shares of the aforesaid defendants.

A draft Agreement to sell dated 16.09.2014 was prepared which bore the signature of defendants but was not signed by the plaintiff. The property was valued at Rs 8 Crores and one Pritpal Singh who did not pay any penny also signed the same as a second party. A sum of Rs 3,10,25,500/- in total was paid to D-1 to 5 and a sum of Rs 60,71,429/- was paid to D-6 to 11. Later on, the plaintiff came to know that the assurances given by defendants were false and lease hold rights were not subsisting in their favour. By way of present suit, the plaintiff has claimed recovery of the money alongwith interest.

The said suit is opposed by learned counsel for D1 to 5 as well as by D-6 to 11 wherein D1 to 5 clearly denied having executed any Agreement to Sell with the plaintiff or having received any money in pursuance of its execution. They also claimed that the receipts filed by plaintiff on record are forged and fabricated. One more objection was taken by D1 to 5 regarding the suit being bad for non-joinder of parties on the ground that Pritpal Singh was one of the alleged co-buyer and he was not made as a party to the suit.

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With this background of facts, I proceed herein under to decide the present application after dealing with the arguments addressed by both the parties.

Learned counsel for the plaintiff submits that on 16.12.2019, the suit was listed before the Hon'ble Court for settling the issues and the counsel for D1 to 5 stated that it was liable to be dismissed for non-joinder of necessary party. Learned counsel has argued that he made a submission before the Hon'ble Court that he will implead Sh Prit Pal Singh as a plaintiff and matter was adjourned to another Court. Learned counsel has argued that pursuant to this order, the captioned application under Order 1 Rule 10 was filed by him alongwith amendment application and the same deserves to be allowed.

On the other hand, learned counsel for D 1 to 5 has vehemently opposed the arguments on the ground that Sh Prit Pal Singh is neither a necessary nor a proper party in the present case and at the most he can be summoned as a witness. In this regard, he has relied upon the following judgements:-

- 1. *State Bank of India vs Siddhartha Enterprises* 1996 (36) DRJ 416)**
- 2. *Kailash Nath Aggarwal vs Sunila Dass* 2002 Lawpack (Del) 86375**
- 3. *Archana Sethi vs Sachin Verma* 2021 Lawpack (Del) 84764**
- 4. *Micromax Media Pvt Ltd vs Ingram Micro India Pvt Ltd* FAO (OS) 184/2015.**



Learned counsel for D 1 to 5 has further argued that even otherwise the impleadment application cannot be allowed as plaintiff slept over his rights and now the suit is barred by limitation in case Sh Prit Pal Singh is added as plaintiff No.2 in the present case. He has relied upon the following judgments:-

1. ***Shri Golesh Kumar vs Ganesh Dass Chawla Charitable Trust (Regd) 2006 (129) DLT638.***
2. ***Jai Singh Jakhar vs Director (Estate), NDMC 2006 (132) DLT 184.***
3. ***Krishna Chander vs Ram Lal MANU/PH/0098/1973.***
4. ***Manonmanianmmal vs Duraikanu MANU/TN/0715/2005.***

Learned counsel has further argued that in order to become a party in the suit, he should have a direct interest in the subject matter of the litigation as laid down in ***Ramesh Hiranand Kundanmal vs Municipal Corporation of Greater Bombay & Ors.*** Learned counsel has further argued that the application is liable to be dismissed.

Learned counsel for D-7 had already given no objection to both the IAs on 21.01.2021. Rest of the defendants i.e. 6, 8 to 11 neither filed any reply to the IAs nor addressed any arguments on the same.

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

Before advertng to the facts of the case, let us dwell upon the proposition of law under Order 1 Rule 10 CPC.

Order 1 Rule 10 CPC provides as under:-

“ The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out. And

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that the name of any person who 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 the judgment of *Ramesh Hiranand Kundanmal vs Municipal Corporation of Greater Bombay & Ors* passed by Hon’ble Supreme 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]"*

Now coming to the factual matrix, neither the plaintiff nor the defendants denies the existence of the Agreement to Sell dated 16.09.2014. Though the plaintiff had claimed that the said Agreement to Sell is not registered and does not bear his signatures and hence, remain unexecuted however at the same time, he claims that he had made part payments to the D-1 to 11 in pursuance of the said Agreement to Sell out of total consideration amount of Rs 8 Crores. He also states in para No.5 of the plaint that the said

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Agreement to Sell bears signature of one Pritpal Singh from his side who did not pay any penny and the entire payment was made only by him. He alleges to have made certain payments through cash and cheques. Similarly, the execution of Agreement to Sell is denied by the defendants No.1 to 5, however, they have taken preliminary objection of non-joinder of party on the ground that one of the co-buyer Sh Pritpal Singh has not been made as a party. It is only on his objection regarding non-joinder of the party, this application came to be filed, but now when this application has been moved, it is argued that Sh Pritpal Singh can at the best, become a witness in this case.

Sh Pritpal Singh is the only signatory to the alleged Agreement to Sell from buyer's side. A receipt dated 28.12.2015 alleged by signed by D-5 acknowledging payments received by D1 to 5 has been placed on record by plaintiff wherein Sh Pritpal Singh is referred to as co-buyer. Even as per the pleadings of defendants, the entire communication/correspondence of defendants with plaintiff was through Pritpal Singh. Without him being on board, the very basis on which the suit has been filed goes.

The eventual interest of a party in the fruits of litigation is not a true test for impleading a party. If not necessary, he is definitely a proper party whose presence is required for a complete and final decision on the question involved in the suit.

As far as the judgments viz ***State bank of India (supra)***, ***Kailash Nath(supra)***, ***Archana Sethi (supra)*** & ***Micromax Media***
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(*supra*) relied upon by learned counsel for D1 to 5 are concerned, same are not applicable to the case in hand as in none of these cases, the party to be impleaded was a signatory to any document which was major bone of contention in the litigation.

The second objection of learned counsel for D1 to 5 is with respect to period of limitation. Learned counsel for defendants have relied upon certain judgments in support of his contention as mentioned in the preceding paragraphs.

A bare perusal of judgment of ***Sh Golesh Kumar (Supra) and Jai Singh Jakhar (supra)*** shows that the plaintiff failed to implead the proposed party for as long as five years, after taking objections for their non impleadment by the opposite side. However, in the present case, as soon as the objections with respect to the impleadment were taken before the Hon'ble Court in December, 2019, the application was filed in no time i.e. in February, 2020 but it is worthwhile to point here that this application for impleadment has been filed after two years of filing of written statement by D1 to 5. But the delay is not such which cannot be compensated in terms of costs. In the judgment of ***Sh Golesh Kumar (Supra)***, the Hon'ble Court has observed in para No. 7 that:-

“ Another very pertinent fact of the case is that the defendants had taken objection in regard to maintainability of the suit at the very first available opportunity in unambiguous terms. They had taken this objection in the written statement filed by them. Despite such warning, the plaintiff took no steps to amend his plaint though the suit remained pending for more than five years before the Trial Court. The conduct of the plaintiff is such which cannot be ignored by the Court even if Order XXXI Rule 2 of the Code of Civil Procedure is construed and understood liberally. The discretion of the Court has to be exercised in consonance with the settled principles of law. A party who intentionally sleeps over its rights or remedies available to it in law, cannot be heard to say that the Court should exercise discretion

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in its favour particularly when a valuable right has accrued in favour of the other side.”

In the aforesaid case, no steps were taken for five long years and therefore, the conduct of plaintiff was noted and it was observed that a valuable right has accrued in favour of opposite side and that was preciously the reason why the application was not allowed. The facts of this case are entirely different. The plaintiff had been vigilant in the present case, therefore, these judgements are not applicable.

The judgement of ***Krishna Chander (supra)*** is pertaining to an Election Petition which is governed by Representation of The People Act, 1951 and not by the CPC and cannot to be applied to the case in hand.

The facts of judgment of ***Manonmaniammal (Supra)*** are completely different and cannot be applied to the present case.

In view of the discussions made above, the objections taken by defendants to the impleadment of Sh Pritpal Singh are turned down. Hence, application under Order 1 Rule 10 CPC stands allowed, subject to cost of Rs 20,000/- payable by plaintiff to learned counsel for D1 to 5.

In consequence thereof, the application for amendment of plaint incorporating the pleadings qua Sh Pritpal Singh also stands allowed as there is no change in the relief sought.

Both the applications stand disposed off accordingly.

VANDANA JAIN (DHJS)
JOINT REGISTRAR(JUDICIAL)

SEPTEMBER 2, 2022/SK
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Mr. Vaibhav Sinha, Advs for D9 to 11.

CORAM:

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

ORDER

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02.09.2022

Vide separate order passed in IA No.3149/2020(U/O Rule 10 CPC filed by plaintiff No.1 for impleadment of plaintiff No. 2- Mr. Prithpal Singh) and IA No.3150/2020(U/O VI Rule 17 CPC filed by plaintiff for amendment of suit) are hereby allowed.

Amended Memo of Parties and Amended Complaint filed by plaintiffs are taken on record.

Amended written statement, if any be filed by defendants in accordance with law with advance copy to plaintiffs.

As requested, let the matter be placed before Hon'ble Court on the date already fixed in the case i.e. on 05.09.2022 for further directions.

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

SEPTEMBER 2, 2022/SK