

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

Judgment Reserved on: October 20, 2009

Judgment Pronounced on: November 10, 2009

+ FAO (OS) 315 of 2009
&
C.M. Nos. 10316 & 10317 of 2009

RAJ RANI SHARMA Appellant
Through: Mr. Ramesh Chandra,
Senior Advocate, with Ms. Geeta
Mehrotra & Mrs. R. Ratnam,
Advocates

versus

GAYATRI KUKREJA & OTHERS Respondents
Through: Mr. Jayant Bhushan, Senior
Advocate, with Mr. K.B. Upadhyay &
Mr. Gautam Talukdar, Advocates

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J

C.M. No. 10316 of 2009

1. There is delay of twenty three days in filing the accompanying Appeal. The reasons put forth for the delay is
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that the Counsel for the Appellant had fallen ill.

2. This application is not opposed by the learned Senior Counsel for the respondents, and rightly so.

3. Application is allowed and the delay in filing of the Appeal is condoned.

4. Application stands disposed of.

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1. Appellant herein- Raj Rani Sharma, is the Plaintiff in whose suit, Sh. Paras Nath Pathak (Respondent No.3), has been added as a Defendant vide impugned Order of May 14, 2009.

2. Appellant in her suit has sought declaration that she is the *bona fide* purchaser of property bearing No. B-47, Upkar Cooperative Housing Society (Regd.), Plot No. 18, Mayur Vihar, Phase-I Extension, Delhi (hereinafter referred to as the 'suit property'). The stand of the Respondent- Upkar Co-operative Group Housing Society (hereinafter referred to as the 'Respondent-Society') in the suit proceedings is that the Appellant/ Plaintiff has no right or title in the suit property, as she had allegedly purchased the same from Respondent/ Defendant No.1- Smt. Gayatri Kukreja, who herself had no right or title in the suit property and the added Defendant/ Respondent No.3 is a *bona fide* member of the Respondent-Society and the suit property is proposed

to be allotted to him.

3. Learned Single Judge has noted in the impugned Order that the Appellant/ Plaintiff is yet to prove that she is the *bona fide* purchaser and has found Respondent No.3/ added Defendant to be a necessary and proper party to the suit and thus, the application of Respondent No.3 under Order I Rule 10 of the CPC has been allowed.

4. We have heard learned Counsel for the parties and have perused the record of this case.

5. The submission advanced by the learned Senior Counsel for the Appellant is that the Plaintiff is a *dominus litis* of his case and Respondent No.3 has no right to impose himself in the suit filed by the Plaintiff/ Appellant. In support of the submission that no one can be added as a party against the wishes of the Plaintiff, reliance has been placed upon the case of '*Ramesh Hiranand Kundanmal v. The Municipal Corporation of Greater Bombay & Others*' **JT 1992 (2) S.C. 116.**

6. Per contra, learned Senior Counsel for the Respondents refutes the aforesaid contention advanced on behalf of the Appellant and asserts that the Court is empowered to join a person whose presence is necessary for adjudication of the subject matter of the dispute and the aforesaid decision relied upon by the Appellant's Counsel

has no application to the instant case.

7. The question of impleadment of a party is to be decided on the touch stone of Order I Rule 10 CPC, which provides that only a necessary or proper party may be added. 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 suit proceedings.

8. In the light of the clear language of the aforesaid Rule 10 of Order I of the CPC, it is not open to the Appellant to contend that a person cannot be added as a Defendant even in a case where his presence is necessary to enable the Court to decide the matter effectively. In the case of *Ramesh Hiranand Kundanmal* (Supra), it is not ruled by the Apex Court that it is the choice of the Plaintiff to implead or not to implead any person in a suit brought by him. What has been reiterated by the Apex Court is that the Court is empowered to join a person, whose presence is necessary for complete adjudication of the disputes raised before it. In the facts of the aforesaid case, it was found that the newly added party had no interest in the subject matter of the suit and the demolition of the structure in pursuance of the Notice by the Municipal Authority did not affect the legal

rights of the newly added party. Whereas, in the instant case declaration sought by the Appellant / Plaintiff directly affects Respondent No.3, to whom Respondent- Society intends to allot the suit premises.

9. In any case, respondent No.3 is a proper party for resolution of disputes in the suit proceedings. Impleadment of Respondent No.3 does not enlarge the scope of disputes raised in the suit proceedings.

10. In this view of the matter, we do not find any infirmity in the impugned Order. This Appeal is bereft of merit and is hereby dismissed. Pending application is rendered infructuous and is disposed of as such.

11. Costs are made easy.

(SUNIL GAUR)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

November 10, 2009

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