

* **HIGH COURT OF DELHI: NEW DELHI**

CM (M) No.1286/2010 & CM No.18317/2010

% Judgment reserved on: 7th October, 2010

Judgment delivered on: 21st October, 2010

Narayan Dass

S/o Tala Ram

R/o IX/6535, Indra Gali,

Gandhi Nagar,

Delhi - 110031

....Petitioner.

Through: Mr. Gaurav Sethi, Adv.

Versus

1. Ashok Kumar @ Agastya
S/o Narain Dass
R/o Flat No. 227, First Floor,
Gaur Green Avenue,
Ghaziabad, U.P.

2. Madhu Chawla
W/o Ravi Chawla
R/o 203, Surya Niketan,
Vikas Marg,
Delhi – 110092

....Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported
in the Digest?

Yes

V.B.Gupta, J.

Present petition under Article 227 of the Constitution of India has been filed by petitioner against order dated 17th August, 2010 passed by Administrative Civil Judge, Karkardooma Courts, Delhi, vide which application under Order 1 Rule 10 of Code of Civil Procedure (for short as 'Code') filed by applicant-Smt. Madhu Chawla was allowed and petitioner was directed to amend the plaint accordingly.

2. Brief facts of this case are that, petitioner has filed a suit for injunction against respondent No.1 (his son) alleging that he (petitioner) has purchased property No. IX/5810, Subhash Mohalla, Gandhi Nagar, Delhi -110031 in two parts. Half of the property was purchased by petitioner from one Ravinder Singh and remaining half of the property was purchased by him in the name of respondent No.1. Now, respondent No.1, is threatening to dispossess the petitioner from property in question without adopting the due process of law.

3. In the written statement filed by respondent No.1, he took a preliminary objection that the suit is bad for non-joinder of necessary

parties as respondent No.1 has already transferred the ownership/title of the property in question vide Gift Deed to his wife Smt. Nancy Mehndiratta. Now, his wife being the sole owner of property in question has sold the said property to Smt. Madhu Chawla and as such Smt. Nancy Mehndiratta and Smt. Madhu Chawla are necessary parties to the suit.

4. In application under Order 1 Rule 10 of the Code filed by applicant Smt. Madhu Chawla, it is stated that she is the owner of half part of the property in question having purchased the same from Smt. Nancy Mehndiratta and petitioner is aware about this fact. The applicant being the owner of half part of the property in question, is a necessary party and as such she may be impleaded as defendant in the suit.

5. It is contended by learned counsel for petitioner that petitioner has filed a suit for injunction and has claimed relief against respondent No.1 only. Moreover, applicant in no manner had done any act to wrongfully dispossess the petitioner and further petitioner is not having any apprehension against the applicant. As such impugned

order allowing the applicant to become as defendant is patently illegal and beyond jurisdiction.

6. Trial court in impugned order observed;

“The applicant has also placed on record gift deed executed by the defendant in favour of his wife. I am of the view as the applicant has purchased the half portion of the suit property from the wife of defendant, the defendant has no interest in the suit property as he has already sold the half portion of the suit property and definitely the applicant will be effected by the decision of this case. It is contended by the counsel for the plaintiff that the present suit is for permanent and mandatory injunction. Taking into consideration the fact that the half portion of the property has already been sold by the wife of the defendant to the applicant, the applicant is a necessary party and she is impleaded as defendant.”

7. Order 1 Rule 10 of the Code read as under:-

“10. Suit in the name of wrong plaintiff – (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties – 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 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.

(3) XXXXXXXXXXXXXXXX

(4)XXXXXXXXXXXXXXXXXX

(5)XXXXXXXXXXXXXXXXXX

8. The object of the above provision is to enable the Court at any stage of the suit to add a person as a party when it is unable effectually and completely to adjudicate upon and settle all the questions involved in the suit in the absence of that person.

9. In *Savitri Devi vs. District Judge, Gorakhpur and Others*, (1999) 2 SCC 577, Apex Court has observed:-

“9. Order 1 Rule 10 CPC enables the court to add any person as a party at any stage of the proceedings if the person whose presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of a multiplicity of proceedings is also one of the objects of the said provision in the Code.

10. In *Khemchand Shankar Choudhari v. Vishnu Hari Patil* (1983) 1 SCC 18 this Court held that a transferee

pendente lite of an interest in an immovable property which is the subject-matter of a suit is a representative in the interest of the party from whom he has acquired that interest and has a right to be impleaded as a party to the proceedings. The Court has taken note of the provisions of Section 52 of the Transfer of Property Act, 1882 as well as the provisions of Rule 10 of Order XXII CPC. The Court said (SCC p. 21, para 6)

“It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard.”

10. Since applicant is the owner of half portion of the property in question and respondent No.1 has already sold his share to the applicant, under these circumstances applicant is a necessary party. Thus there is no ambiguity or illegality in the impugned order passed by the trial court.

11. Present petition under Article 227 of the Constitution of India is not maintainable and same is hereby dismissed.

CM No.18317/2010

12. Dismissed.

October 21, 2010
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V.B.GUPTA, J.