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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 23, 2010

Date of Order: March 02, 2010

+ CM(M) 1159/2009

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Ramesh Chander Gupta

Through: Mr. P. Kalra, Adv.

02.03.2010

...Petitioner

Versus

Iqbal Singh and others

Through:

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By this petition, the petitioner has assailed an order dated 27.08.2009, whereby an application of the petitioner under Order 1 Rule 10 CPC, was dismissed by the trial court.

2. The brief facts for deciding this petition are that respondents filed a suit for possession and damages/mesne-profits, in respect of property bearing no. TA-93, Khasra No. 64, Ravi Das Market, Tuglakabad Extension, New Delhi-100 019. In this civil suit Devi Prashad was made sole defendant while the plaintiff Nos.1 to 5 were legal heirs of Smt. Manjeet Kaur. This suit was filed in the year 2008. The Petitioners filed an application under Order 1 Rule 10 CPC to be

impleaded as defendant in the suit on the ground that petitioner was in possession of the property in question and had already filed a suit for permanent injunction against Smt. Manjeet Kaur and others in respect of the same property. In that suit Smt. Manjeet Kaur (during her lifetime) was restrained by interim injunction from disturbing the possession of the petitioner; and after death of Manjeet Kaur all her legal heirs, who were plaintiffs in the suit pending before the trial court, being LRs were bound by the injunction order. Since the property in question was already subject matter of litigation between the parties in the suit filed by the petitioner, the petitioner was a necessary party in this suit as well and he should be impleaded as a defendant.

3. This application of the petitioner was dismissed by the trial court, without even discussing the facts as mentioned in the application under Order 1 Rule 10 CPC and without considering how the petitioner was not a necessary party or proper party. The trial court only observed that since it was the case of the respondents (plaintiffs in the suit) that the defendant in the suit has sold the property to Mohit Gupta and plaintiffs had purchased the property from Ramphal and sold the same to Mohit Gupta, the applicant was not a necessary party and he dismissed the application.

4. I find that the order of the trial court is totally perverse. The trial court had not discussed the basic facts pleaded by the applicant/petitioner as to why he was a necessary party. The trial court

also did not touch upon the fact that the same property was subject matter of litigation between the applicant and the respondent before another competent court that had issued an injunction and the judgment passed by that court would make the suit before the trial court as infructuous.

5. Accordingly, the petition is allowed. The order dated 27.08.2009 of the trial court is set-aside. The application of the petitioner under Order 1 Rule 10 CPC stands allowed. He will be impleaded as a defendant in the trial court and shall be allowed to contest the suit filed by the respondent.

March 02, 2010
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SHIV NARAYAN DHINGRA J.