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

% *Judgment pronounced on: August 26, 2013*

+ **CM(M) No.823/2012 & CM No.12423/2012**

SHEELA & ANR. Petitioners
Through Mr.Suresh Singh, Adv.

versus

DAYA CHAND Respondent
Through Mr.M.K. Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition under Article 227 of the Constitution of India, the petitioner has assailed order dated 31st March, 2012 passed by learned trial court dismissing petitioner's application under Order 1 rule 10 CPC in a suit for permanent and mandatory injunction filed by the respondent against the petitioners praying that the petitioners be directed to hand over physical, peaceful and vacant possession of property no. CB-311, Ring Road, Nariana, Delhi to the respondent. The petitioners had filed a counter claim in the said suit claiming half share in the suit property on the basis of a Will of Smt. Chawli Devi (grandmother).
2. During the course of the proceedings when the suit was listed for framing of issues, the petitioners filed an application under Order 1 Rule 10 CPC for permission to implead all the legal heirs of Smt. Chawli Devi in the counter claim since the respondent in his written statement in the counter

claim had contended that the other legal heirs of Smt. Chawli Devi were not made parties in the counter claim. Accordingly one of the issues framed in the suit and the counter claim was "*whether the counter claim is bad for mis-joinder and non-joinder of necessary parties*". In their reply to the said application, the respondent contended that the real controversy was between the petitioners and the respondent and therefore there was no necessity of impleading other persons as parties. It was also contended that neither the petitioners nor the respondent had claimed any relief against the proposed parties and so their addition at this stage would further drag the case.

3. The learned trial court observed that the suit was filed in the year 2009 and subsequently, the plaint, the written statement, the counter claim, all had been amended and there had been several applications that were filed and disposed in the meantime. At the stage when issues were framed, the said application under Order 1 Rule 10 CPC was filed on the ground solely that the petitioners wanted to overcome the objection raised by the respondent in his written statement to the counter claim. It was opined that the petitioners ought to have been diligent enough while filing the counter claim as to whether all the necessary parties are made or not. By making the legal heirs on Smt. Chawli Devi as parties the petitioners were taking the litigation beyond the principles of counter claim under Order 8 Rule 6A CPC and if the said application was allowed and the legal heirs of Smt. Chawli Devi were made parties, then the entire proceedings would be relegated to the stage of pleadings. Accordingly the application was dismissed vide order dated 31st March, 2012 since the matter is at the stage of evidence and neither of the party was seeking relief against the proposed parties.

4. Learned counsel for the respondent has argued that the petitioner in fact has not given the correct facts of the case in the present petition. As per the respondent, the facts are that Sh.Som Nath, the husband of the petitioner No.1 (defendant No.1 in the suit) also filed a suit for partition, declaration and permanent injunction of two properties i.e. CB-311, Ring Road, Naraina and House No.A-5/130, Janakpuri, New Delhi, inter alia, alleging that the said two properties were purchased from joint funds of the parties and he was one of co-owners of the said two properties. This Court (Hon'ble Mr. Justice Ravindra Bhat) by order dated 8th February, 2008 passed a preliminary decree only in respect of Janakpuri property. However, declined to grant relief with regard to property No.CB-311, Ring Road, Naraina, holding that Sh.Som Nath failed to prove that the said property was purchased from the joint family funds and it was held that the said property was the self-acquired property of the respondent. On the basis of the said judgment, the respondent filed the suit for permanent injunction and possession against the present petitioner on the ground that the respondent purchased the Plot No.13 measuring 160 square yards under Agreement to Sell, GPA, Receipt and Will etc. from Sh.Duli Chand, son of Sh. Khem Chand, resident of WZ-322, Basai Darapur, Delhi, against consideration on 23rd February, 1978 and thereafter raised the construction on the said plot from his own funds which is now property known as CB-311, Ring Road, Naraina, Delhi.

5. The case of the respondent is that the respondent permitted Sh. Som Nath, husband of the petitioner No.1, being his younger brother, to live in the said property and thus the petitioners are in the permissive possession of 32 square yards of the suit property though the said property is self-acquired

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property of the respondent as held by this Court while deciding the suit filed by Sh. Som Nath, husband of the petitioner No.1.

6. The petitioners herein filed the counter claim on the basis of the alleged Will dated 31st May, 1983 allegedly executed by Smt.Chawli Devi, mother of the respondent, in favour of Sh. Som Nath, husband of petitioner No.1. It is the admitted position that the said alleged Will was never produced by Sh. Som Nath in Suit No.49/2007 filed by him before this Court nor the alleged Will was ever placed on record by the petitioners. Since 1983, it was the first time the petitioners filed the alleged Will with their counter claim on 19th August, 2010 i.e. after 27 years in the suit filed by the respondent. Although the respondent's application under Order VII, Rule 11 CPC was dismissed by the Additional District Judge, Dwarka Court, Delhi, but the application filed by the petitioner under Order 1 Rule 10 CPC for impleadment of all the legal heirs of late Smt.Chawli Devi was also dismissed.

7. I agree with the argument of the learned counsel for the respondent that the respondent, who is plaintiff in the trial court, is a dominus litis and cannot be compelled to fight against the proposed legal heirs of late Smt.Chawli Devi, who allegedly executed a Will which was neither relied upon by the husband of the petitioner No.1 in his suit nor by the petitioners for 27 years. The present petitioners neither claim any relief against the proposed legal heirs of the deceased Chawli Devi nor have raised any controversy against them. Moreover, apparently the said legal heirs did not have any interest directly or indirectly in the suit property. Therefore, I totally agree with the finding of the learned trial court that the proposed legal representatives are neither necessary nor property parties to the suit filed by

the respondent against the petitioners herein as the suit is not in the nature of probate proceedings.

8. In view of the above said reasons, the present petition is dismissed with cost of ₹10000/- which shall be deposited by the petitioners with the Advocates Welfare Fund within four weeks from today.


(MANMOHAN SINGH) /
JUDGE

AUGUST 26, 2013