

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

Judgment Reserved on: November 27, 2015

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Judgment Delivered on: December 01, 2015

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CM(M) 1155/2015

PURAN CHAND

..... Petitioner

Through: Mr.Arun Kumar and Mr.Udit Goyal,
Advocates.

versus

RAJ KUMAR & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

CM(M) 1155/2015

1. The petitioner has invoked the extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India praying for setting aside the order dated 07.11.2015 whereby the application filed by the petitioner/plaintiff under Order I Rule 10 CPC for deleting the name of defendant No.3 has been dismissed by the learned Trial Court.

2. The impugned order dated 07.11.2015 reads as under:

“07.11.2015

*Present : Sh.Arun Kumar, counsel for the plaintiff.
Sh.G.D.Sharma, counsel for defendant no.1 to 4.
None for defendant no.5.*

Reply to the application U/o 1 Rule 10 CPC on behalf of defendant no.1, 2 and 4 filed. Copy supplied.

Arguments on the application U/o 1 Rule 10 r/w Section 151 CPC filed by plaintiff heard. Record perused.

It is submitted by counsel for the plaintiff that application U/o 1 Rule 10 CPC may kindly be allowed and defendant no.3 be deleted from the array of defendants. It is stated that plaintiff has filed the present suit for partition. That on enquiry from the relatives and defendant no.3 and other defendants, it came to the knowledge of the plaintiff that husband of defendant no.3 namely, Sh.Ram Chander was given on his demand, Cash by Smt.Yashoda Devi out of the sale proceed of her house in lieu of his share. It is stated that after getting the share in cash from Smt.Yashoda Devi, neither defendant no.3 nor her children have any rights in the suit property.

In the reply, the application is strongly opposed by defendants. The submissions of the plaintiff are strongly denied and it is prayed that application may kindly be dismissed.

The perusal of the record reveals that the plaintiff has filed the present suit for partition of the suit property. Both the parties have already led the evidence. Final arguments advanced by both the counsels already heard and matter was reserved for orders.

At this stage, the plaintiff moved the present application. In the present case, trial is concluded, therefore, it is not fair to delete defendant No.3 from the array of parties. The reason mentored for deleting the name of defendant no.3 from the array of parties is a matter of fact which cannot be decided in

the application. The defendants have disputed the grounds of deleting the name of defendant no.3 from array of parties.

In the present facts and circumstances, I am of the considered opinion that there is no justified ground to delete the name of defendant no.3 from the array of parties at this stage under the provisions of Order I Rule 10 CPC. Accordingly, application is dismissed.

Final arguments already heard.

Put up for orders on 17.11.2015.”

3. The principles governing impleadment as well who is a necessary and proper party, have come up for consideration before the Supreme Court in Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre and Hotels Pvt. Ltd. & Ors. (2010) 7 SCC 417 wherein it was held as under :

8. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

Court may strike out or add parties.

(2) 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.

The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff.'

4. The grievance of the petitioner is that in a suit for partition if the name of defendant No.3 is deleted the remaining party will get 1/5th share, otherwise it will come down to 1/6th share. It has been further submitted by learned counsel

for the petitioner that since defendant No.3 had already taken her share as is clear from the affidavit, copy of which is placed on record at page No.24, hence her name should have been deleted from the array of parties.

5. The suit filed by the petitioner/plaintiff seeking the relief of partition is pending before the Court which has to be decided by the learned Trial Court on the basis of evidence adduced before it. The affidavit allegedly sworn by Smt.Gyasi Devi/defendant No.3 regarding receiving the share of her husband in cash is a question of fact to be decided by the learned trial Court and not by this Court in exercise of its jurisdiction vested under Article 227 of the Constitution of India.

6. The scope of power of this Court under Article 227 of the Constitution is not in the nature of appellate jurisdiction and so, the extent and scope of power with this Court is limited and restrictive in nature, and in the normal circumstance, it is exercised where there is want of jurisdiction, error of law or perverse findings by the trial Court. Such power is to be exercised to keep the subordinate court within limits of their jurisdiction and authority and it is not to act as an Appellate Court for correcting the decisions of the subordinate courts. This court would not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity. Thus, in the absence of there being any material illegality or perversity, the order of the court below is not to be faulted with or interfered with by this court in its supervisory power under Article 227.

7. Finding no illegality or perversity in the impugned order, the petition is dismissed.

8. No costs.

CM No28181/2015

Dismissed as infructuous.

**(PRATIBHA RANI)
JUDGE**

DECEMBER 01, 2015
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