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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 125/2016 & C.M. Nos.4551-52/2016
SUSHIL KUMAR JAIN Petitioner
Through Mr. Satya Prakash Yadav, Adv.
versus
ANITA DEVI & ORS Respondents
Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **08.02.2016**

Order impugned before this Court is the order dated 06.10.2015 vide which the application seeking review of the earlier order dated 03.12.2012 had been dismissed.

The petitioner before this Court was the applicant in his application filed under Order 1 Rule 10 of the CPC. He was Sushil Kumar Jain. His contention was that he had purchased the suit property by virtue of an agreement to sell, power of attorney, registered Will and GPA from its previous owner N.C. Jain. N.C. Jain had purchased it from Sudesh Kumar Jain who in turn had purchased it from Pramod Jain.

Record shows that the present suit is a suit for partition, declaration and permanent injunction. The plaintiff is the brother of defendants No. 1 & 2. Defendants No. 3 to 5 are the persons who are living in a part of the property without payment of rent.

The contention of the applicant in his application under Order 1 Rule 10 of the CPC was that he is also a necessary and a proper party and without him, there cannot be an effective adjudication of the suit. The Trial Court had dismissed his application. Review against that

order was also dismissed.

The contention before this Court is that the applicant Sushil Kumar Jain had purchased this property vide aforementioned registered documents dated 05.10.2005 and these documents had not been considered in the correct perspective by the Trial Court while dismissing the application.

The Trial Court had noted the proposition of law in the correct perspective. An application under Order 1 Rule 10 of the CPC is permitted to be allowed only if a person is a 'necessary' or a 'proper' party and without whom an effective adjudication cannot be carried out. The Trial Court had rightly noted that the present suit is essentially a suit for partition between the three siblings. Their father had died and prior to his death, he had leased out a part of the property to defendants No. 3 to 5; limited prayer against defendants No. 3 to 5 is that they should be asked to pay the rent. The applicant before this Court is seeking an independent title to the suit property, he has independent redressal; he cannot be permitted to join these proceedings to create a confusion and de-rail the essentiality of the plaint which has been filed by the plaintiff; which at the cost of repetition is essentially a suit for partition.

In this background, the impugned order suffers from no infirmity. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

FEBRUARY 08, 2016/A