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

+ CM(M) 554/2010

RAM KUMAR

..... Petitioner

Through Mr.R.K.Jain, Advocate.

versus

HAR MAHESH KUMAR & ORS

..... Respondents

Through Mr.Jai Gupta, Advocate for R-1.

+ CM(M) 751/2010

HARMESH KUMAR

..... Petitioner

Through Mr.Jai Gupta, Advocate

versus

RAM KUMAR & ORS

..... Respondent

Through Mr.R.K.Jain, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **16.02.2016**

1 This is an unfortunate dispute between two brothers. Record shows that the present suit is a suit for possession and mesne profit which has been filed by Ram Kumar against his brother Har Mahesh Kumar. Contentions and the averments in the plaint disclose that the plaintiff is the owner of property of property No.D-135, Mansarovar Garden, New Delhi. Their mother Kaushlya Devi had executed a registered gift deed in favour of the plaintiff on 26.11.2007 qua the

suit property. She being the owner of the suit property was entitled to do so. The defendant who is living on the first floor is only a licensee. Accordingly, the present suit was filed by the plaintiff seeking a decree of possession as also mesne profits.

2 Written statement was filed. The defence of the defendant was that the mother of the plaintiff has no individual source of income. This plot of land was purchased in the year 1964 out of the HUF funds and as such the plaintiff is not entitled to claim ownership over the suit property. Evidence was in progress. During the course of trial, an application under Order I Rule 10 CPC came to be filed on 14.9.2009. This application was filed by the defendant. His contention was that since the defence in his written statement was that the suit property was purchased out of the HUF funds by the grandfather of the parties namely Govind Ram (who was the Karta of the said HUF) his son be impleaded in the present proceedings. Vide earlier order dated 12.10.2009 Jagan Nath (karta of the HUF after demise of the Govind Ram) was impleaded as a party. Written statement filed by the father of the parties. He made a statement that there was no HUF of the family and this property was individually owned by his wife i.e. the mother of the parties. A review petition was filed against the said order. That was dismissed. This Court has been informed that Jagan Nath has since expired.

2 The impugned order came to be passed on the subsequent application which was filed by Bimla Devi and Paramjit Singh; they also claimed impleadment. Their contention being that since they were members of the co-parcenary they should be impleaded.

Impugned order had allowed their prayers and impleaded Bimla Devi and Paramjit Singh. The impugned order has been challenged by the plaintiff.

3 Thereafter a subsequent order came to be passed on 5.3.2010; this order had been passed on the review petition filed by the defendant. The defendant had sought review of the earlier order dated 12.10.2009 wherein Jagan Nath alone had been impleaded as a party. Contention of the plaintiff was that all the members of the co-parcenary should have been impleaded as a proper and necessary party.

4 Before this Court there are two petitions i.e. CM(M) No.554/2010 and C.M.(M) No.751/2010. The plaintiff is aggrieved by the order dated 16.02.2010 and rightly so. Bimla Devi and Paramjit Singh who were members of a co-parcenery and merely because a defence had been taken by the defendant that the suit property was the subject matter of HUF funds (which position was denied by their father Jagan Nath) as also a written document which is a registered gift deed dated 26.11.2007, staring on the face of the record (in favour of the plaintiff), the question about Bimla Devi and Paramjit Singh either being a necessary or proper party did not arise. A proper and a necessary party is a party without whom an effective adjudication of the case cannot be carried out.

5 The plaint is a simplicitor suit for possession against the brother who is the defendant before the Trial Court and is in possession of the first floor of the property. Admittedly Bimla Devi and Paramjit Singh are not living in the suit property. How they would be effective for

the adjudication of the case is totally in-explainable; in fact their impleadment would derail the entire proceedings. The impugned order has been passed on an illegal parameter.

6 Accordingly, the impugned order dated 16.02.2010 is set aside. The application of Bimla Devi and Paramjit Singh filed under Order I Rule 10 CPC is dismissed.

7 The order dated 05.3.2010 vide which the defendant had sought a review of the order dated 12.10.2009 has become more or less infructuous as the father of the parties namely Jagan Nath who had been impleaded as a party (by the order dated 12.10.2009) after filing his written statement has since expired. That order now calls for no interference. It has also been pointed out by the learned counsel for the plaintiff that the other co-parceners who have sought impleadment are all cited as witnesses in the list of witnesses. A submission has been made by learned counsel for the defendant that Bimla Devi and Paramjit Singh also be permitted to be summoned as witnesses. The submission of the learned counsel for the plaintiff on this count is that this is only to delay the proceedings. This prayer is accordingly declined. It is only those witnesses whose names appear in the list of witnesses filed by the defendant before the Trial Court also shall be permitted to be examined before the Trial court.

8 Both petitions are disposed of by this common order.

INDERMEET KAUR, J

FEBRUARY 16, 2016

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