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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 136/2015 & C.M. Nos.2827/2015 (stay)
UPMA KHANNA

..... Petitioner

Through Counsel for the petitioner (appearance
not given.)

Versus

UNION OF INDIA & ORS

..... Respondents

Through Mr. Vishal Mahajan, Adv. for UOI/R-1
Mr. Harpreet Singh, Mr. Rajesh Gupta
and Mr. Pranjal Saran, Advs. for R-5.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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20.01.2016

Order impugned before this Court is the order dated 11.11.2014 vide which the prayer made by the applicant (proposed defendant No. 5 Tarun Sawhney) seeking impleadment under Order 1 Rule 10 of the CPC had been allowed. The plaintiff/petitioner is aggrieved by this order.

Record shows that the present suit has been filed by the plaintiff under Section 31 of the Specific Relief Act for cancellation of disclaimer deed purported to have been executed by the plaintiff qua the defendant/DDA dated 12.07.2010. Initially two defendants were impleaded i.e. Union of India and L & DO but on order passed by the Court, the other legal heirs of the deceased along with the plaintiff (defendants No. 3 & 4) were also made a party.

The application under Order 1 Rule 10 of the CPC was filed by Tarun Sawhney. His submission was that the plaintiff and the other legal heirs namely defendants No. 3 & 4 were the joint owners of property bearing No. 32, Nizamuddin East, Delhi; the disclaimer deed dated 12.07.2010 purportedly entered into by the plaintiff disclaiming her right to object to the mutation of ½ of the said property in the name of his sisters is liable to be cancelled. Accordingly, the present suit under Section 31 of the Specific Relief Act had been filed against the L & DO seeking a disclaimer of the aforementioned deed. Submission being that the plaintiff had been coerced to sign this disclaimer deed.

Initially the L & DO was alone made a party but thereafter under the orders of the Court, the other legal heirs of the deceased (defendants No. 3 & 4) were also arrayed as parties.

The present application has been filed by the proposed defendant No. 5 namely Tarun Sawhney. His version is that an agreement to sell had been entered into between the brothers and sisters of the plaintiff in favour of Tarun Sawhney on 16.09.2009 pursuant to which the mutation had also been effected of the aforementioned property. It is also an admitted fact that a date had been fixed by the L & DO for the execution of the conveyance deed in favour of Tarun Sawhney.

Record further discloses that the proposed defendant (Tarun Sawhney) had filed a suit for specific performance on 01.10.2010 which is pending before this Court wherein the present plaintiff/petitioner had been arrayed as respondent No. 3. Contention in that suit is that this suit property had been sold in his favour vide agreement to sell dated

16.09.2009. The total consideration was Rs.15,90,00,000/- of which Rs.90 lacs was paid as an advance and the balance consideration was to be paid in terms of clause 5 of the agreement to sell.

The contention before the Trial Court of the proposed defendant was that he had interest in the suit property in terms of the agreement to sell which has been executed in his favour and as such he being a 'necessary' and a 'proper' party, his presence before the Trial Court is necessary for an effective adjudication of the suit which has been filed by the plaintiff under Section 31 of the Specific Relief Act. Additional submission of the learned counsel for the non-applicant being that his suit for specific performance will become infructuous if the present suit is allowed to proceed without recording the defence of the applicant as in terms of the agreement to sell dated 16.09.2009, he has a direct interest in the suit property.

These submissions have been refuted. Learned senior counsel for the petitioner has placed reliance upon Section 54 of the Transfer of Property Act; submission being that it is also by virtue of sale that an 'interest' in an immovable property is transferred. The proposed defendant is only relying upon an agreement to sell which does not amount to a 'transfer' of property. To support this submission, learned counsel for the petitioner has placed reliance upon (2008) 10 SCC 153 Kumar Gonsusab and Others Vs. Mohammed Miyan Urf Baban and Others as also 1997 AIR 1226 Piarey Lal Vs. Hori Lal.

This Court is not in agreement with the submissions made by the learned counsel for the petitioner.

The order impugned before this Court is an order passed on an application under Order 1 Rule 10 of the CPC which necessitates that if a person is either a necessary or a proper party and without whose presence, the case cannot be adjudicated upon effectively, he may be joined as a party.

Admittedly there is an agreement to sell dated 16.09.2009 which had been entered into by the plaintiff and her other legal heirs to sell half portion of the suit property in favour of the applicant/Tarun Sawhney. An advance of Rs.90 lacs was paid by him out of the total sale consideration. Since the applicant's right had not culminated into a sale, he had filed a suit for specific performance which is pending before a Bench of this Court. Mutation letter dated 27.07.2010 had also been issued by the L & DO in favour of the applicant.

Who is a necessary or a proper party has time and again elucidated by the Courts in a catena of judgments. A necessary party is whom without whose, no order can effectively be made. A proper party is who, whose presence is necessary for complete and final decision of the question involved in the proceedings.

This Court is of the view that the impugned order in this background suffers from no infirmity. Submission of the learned counsel for the petitioner that the applicant has no 'interest' in the property in terms of Section 54 of the Transfer of Property Act is an argument which is misconceived at this stage; the impugned order had not decided the title of the suit; the impugned order was only based on the premise as to whether the right of the applicant would be effected in

case the suit is allowed to proceed without the presence of the applicant. The Trial Court had rightly concluded that the presence of the applicant/Tarun Sawhney would be necessary to adjudicate upon the final controversy between the parties. Section 54 of the Transfer of Property Act is wholly inapplicable in the present scenario. Judgments relied upon by the learned senior counsel for the petitioner in this background are also not applicable.

Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 20, 2016

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