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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 931/2016 & CM Nos.34180-34182/2016**

USHA DEVI

..... Petitioner

Through Mr.Arun Chhachhia, Adv.

versus

DALIP KUMAR & ORS

..... Respondent

Through Mr.Ashok Kumar Mishra, Adv. for
R-4

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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03.10.2016

1. By the present petition the petitioner seeks to impugn the order dated 13.5.2016 by which an application filed by the respondent No.4 under Order I Rule 10 CPC was allowed. This court issued notice to respondent No.4 and noted the issues involved on 26.9.2016 as follows:-

“Coming to the second order whereby the application under Order 1 Rule 10 CPC filed by respondent No. 4 was allowed, the suit is filed by the petitioner for recovery of Rs.19 Lacs against respondents No. 1, 2 and 3. It is the contention of the petitioner is that she is the owner of the property measuring 22 Sq,Yds. forming part of property bearing No. WZ-239 A, Gali No. 7, Sadh Nagar, Palam Colony, New Delhi, which was purchased from respondent No. 2 by registered sale deed in 2008. The husband of the petitioner died on 18.05.2011. Respondent No. 2 is the brother-in-law of the petitioner and respondents No. 1 and 3 are sons of respondent No. 2.

It is further averred that in July, 2013, it was agreed that the plot will be sold to the respondents for a total consideration of Rs.30 Lacs and accordingly an Agreement to Sell was executed in the year 2013. The petitioner claims to have got registered the sale deed on 19.12.2013 for the plot on the asking of respondents No,1 to 3, though the outstanding of Rs.29 Lac was pending. Subsequently, some

payments were made in the April, 2014 and June, 2014, leaving a balance of Rs.19 Lac. It is urged that after receipt of Rs.11 Lac (Rs.10 Lac + Rs.1 Lac) in April and June, 2014, the petitioner handed over possession of the plot to respondents No. 1 to 3. Hence, the suit is filed.

Respondent No. 4 filed the application stating that she has purchased the property 11 Sq.Yds. from deceased Ramesh Chand on 13.04.2011. She states that after the death of Late Sh. Ramesh Chand, the petitioner has sold out half share of the applicant alongwith her own share i.e. total 22 Sq.Yds. to the respondents. Hence, impleadment was sought.

The trial court by the impugned order concluded that the applicant is prima facie necessary and proper party without whom no order can be effectively made. Accordingly, the application was allowed.

The suit is filed for recovery of money. In case, the petitioner did not have title to the property which was sold to respondents No.1 to 3, it is for the respondents to defend the case. No relief is being sought regarding the property on which the applicant / respondent No. 4 claims title.”

2. As noted above, the present suit is filed for recovery of money. The case of respondent No.4 is that the petitioner has wrongly sold the suit property to respondent No.2 as the late husband of the petitioner late Shri Ramesh Chand had sold half share of the property to the applicant. Hence, it was claimed that the respondent No.4 is a necessary and proper party.
3. It is the claim of the petitioner that despite execution of a registered sale deed and handing over of possession to respondent No.2 full sale consideration has not been received by the petitioner. What is sought is a money decree. The relief does not in any manner deal with the rights of respondent No.4 to the suit property.
4. The Supreme Court in *M/s Aliji Monoji & Co. v. Lalji Mavji & Ors.*,

AIR 1997 SC 64, in paragraph 5 held as follows:

“5. It is true, as pointed out by Shri Nariman that in para 14, this court in that case had pointed out that what makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of the some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be question in the action which cannot be effectually and completely settled unless he is a party.”

5. There is no relief sought in the present petition outcome of which would bind respondent No.4. Respondent No.2 may seek to defeat the claim of petitioner on the ground that proper title has not been received by him. Then at best, respondent No.4 may be a necessary witness. Respondent No.4 is neither a necessary nor a proper party.

6. The trial court has erroneously passed the impugned order holding respondent No.4 to be a necessary and proper party. The impugned order is liable to be quashed. Needless to add that nothing said herein would prejudice respondent No.4 in any litigation that she may commence/pending litigation regarding her alleged claim to the property which was sold by the petitioner.

7. Petition stands allowed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

OCTOBER 03, 2016/n