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

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Date of decision: 08.08.2016

+ CM(M) 752/2016

SUSHIL KUMAR GUPTA Petitioner
Through Mr.Suryakant Singla and
Ms.Mayanka Dhawan, Advocates.

versus

ABDUL ILAHI AND ORS Respondents
Through Mr. Wajeeh Shafiq, Advocate for R-
2.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH J. (ORAL)

CM No.28297/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 752/2016 and CM No. 28296/2016 (stay)

1. By the present petition, the petitioner has challenged the order dated 28.04.2016 passed by the trial court allowing the application under Order I Rule 10 CPC filed by Respondent No.1. Notice was also directed to be issued to respondent No.2 under Section 90 of the Wakf Act, 1995.
2. The petitioner has filed the present suit against respondents No. 3 and 4 for permanent injunction. It is the contention of the petitioner that he is the absolute owner of the property bearing No. 1529 and 1423, Gali Chulhe Wali, Sadar Bazar, Delhi-110006 and that the said respondents No. 3 and 4

were inducted as tenants in the suit premises in 09.01.1973. It was claimed that the said respondents No. 3 and 4/tenants had illegally broken the walls between the suit premises and without permission have joined the properties. It is also stated in the plaint that the said respondents are trying to sub-let/create third party interest in the suit premises. Accordingly, it was prayed that a decree be passed in favour of the petitioner and against respondents No.3 and 4 restraining them from creating any third party interest in the suit premises.

3. Respondent No.1 filed the application stating himself to be the President of Masjid Committee, Masjid Mohammadi Ahelehadis. It is the contention of the applicant that a Wakf was created by late Mohd. Saddiq whereby he donated the property as Wakf Property as the people offered their prayers at the said place. It is further stated in the application that the said place has been notified as a Masjid in the official Gazette as wakf property on 31.12.1970 and that the predecessor of the petitioner, namely, Hanuman Prasad had encroached upon the Masjid land in the year 1951. On the basis of this, he moved the present application to implead the applicant in the array of the defendants in the present matter.

4. By the impugned order, the trial court dealt with two applications filed under Order 1 Rule 10 CPC. The first application was filed by one Mohd. Ishaq. The said application was dismissed by the trial court holding that the applicant is a local resident and has religious feelings towards the Masjid and that would not entitle him to be a party to the suit.

5. Regarding the present application in question the trial court held that the defendants/respondents No. 3 and 4 have denied the ownership of the petitioner. The trial court also noted the submission of the learned counsel

appearing for the Wakf Board that Section 90 of the Wakf Act, 1995 is applicable and in such a suit or proceedings relating to the title or possession of a wakf property the court shall issue notice to the board. The trial court concluded that the suit is for permanent injunction over a property of which ownership is disputed. Accordingly, the applicant was impleaded as a necessary party and a court notice was issued to Delhi Wakf Board/Respeondent No.2

6. Learned counsel has entered appearance for the Wakf Board/respondent No.2 on receiving an advance copy. Advance copy has also been served on the counsel appearing for respondent No.1. However, none is present for him.

7. The issue is as to whether the Wakf Board which as per the applicant is the alleged owner of the suit property, and the applicant would be a necessary or proper party to the present suit.

8. Order I Rule 10 CPC deals with impleadment of parties. Order I Rule 10 (2) CPC reads as follows:

“Court may strike out or add parties—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”

Hence, only such a party whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and

settle all the questions involved in the suit be added.

9. The Supreme Court in the case of *Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd.*; (2010) 7 SCC 417 held as follows:-

“15. 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 dispute 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. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

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22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court

will of course act accordingly to reason and fair play and not according to whims and caprice.”

10. We may have a look at Section 90 (1) of the Wakf Board which reads as follows:-

“Section 90(1) In every suit or proceeding relating to a title to or possession of a wakf property or the right of a mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.”

11. Hence this provision is applicable to a suit or proceedings relating to title or possession of a wakf property.

12. The plaintiff is “Dominus Litis”. Firstly, the petitioner/plaintiff does not seek any title or possession to the suit property. It is a suit simplicitor for injunction. Secondly, the question as to whether the property in question is a wakf property or not is not an issue raised either by the plaintiff or the defendant. No such issue is there in the pleadings by the plaintiff or by the defendants. Accordingly, Section 90(1) of the Wakf Act would have no application to the facts of the present case.

13. As far as the applicant is concerned, his presence is not necessary to adjudicate or settle any issue involved in the suit. In fact his argument is that the Wakf Board is owner of the suit property. Appropriate party would be Wakf Board if the contention of the applicant is accepted and not the applicant.

14. Regarding the Wakf Board as already stated above, the suit does not in any manner seek to adjudicate the title of the Wakf Board on the property in question. By allowing the Wakf Board to join as a party the suit for injunction against respondent Nos.3 and 4 would actually transform to a title

suit between the petitioner and the applicant/Wakf Board.

15. In my opinion, respondents No.1 and 2 are neither necessary nor proper parties to the present proceedings. Any decree that may be passed against/in favour of the petitioner would not bind the Wakf Board or the applicant inasmuch as neither of them would be a party to the proceedings. Such a decree would also not in any manner effect the rights of the Wakf board on its claim of title to the suit property.

16. Accordingly, the impugned order dated 28.04.2016 to the extent that it impleads respondents No.1 and 2 as parties is quashed. Needless to add, nothing mentioned herein would in any manner prejudice the contentions of respondents No. 1 and 2 regarding alleged title of respondent No.2/Wakf Board to the suit property. The Wakf Board/applicant would be free to take steps as per law to agitate their rights, if any.

17. With the above observations, the present petition stands disposed of.

JAYANT NATH, J

AUGUST 08, 2016
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