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

% *Date of Decision: 18.07.2016*

+ CM(M) 1364/2011

ANTERJIT KAUR Petitioner

Through Mr.P.K.Mishra, Advocate

versus

COL. RAJINDER SINGH (RET) AND ORS Respondents

Through Mr.Amit P.Despande, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition, the petitioner seeks to impugn the order dated 29.08.2011 passed by the learned Additional District Judge-03, South District, Saket, Delhi in Civil Suit No.432/2010.

2. Respondent No.1 filed the suit in question for recovery of possession, arrears of rent and *mesne profit* against defendant No.4. The property bearing No.C-91, Defence Colony, New Delhi was purchased by Late Major Prem Singh. Late Major Prem Singh left a Will dated 01.09.1978. A probate case being No.60/1984 was filed. The probate petition was allowed vide judgment dated 18.12.1986 and letter of administration was granted in favour of respondent Nos.1, respondent No.2 who is son of respondent No.1 and respondent No.3 who is also one of the sons of Late Major Prem Singh.

3. It is the contention of respondent Nos.1 and 2 that in the said property the share of respondent No.1 is 40%, respondent No.2 is 20% and

respondent No.3 is 40%. It is urged that Late Major Prem Singh excluded his married daughters, namely Smt.Antrajit Kaur, i.e. the petitioner, Smt.Harbhajan Kaur and Smt. Adarsh Kaur from property mentioned in the Will. Smt. Amrit Kaur, wife of Late Major Prem Singh was given a limited estate in the suit property as per Will by Late Major Prem Singh dated 01.09.1978.

4. Respondent No.4/defendant No. 1-Sh. Simran Singh (husband of Smt.Antrajit Kaur, the petitioner) an employee of Punjab and Sind Bank Ltd. was inducted as a tenant by Smt.Amrit Kaur vide Lease dated 02.03.2001. Smt. Amrit Kaur was expired on 04.08.2007. It was urged in the plaint that on the said demise of Smt. Amrit Kaur on account of Will of Late Major Prem Singh, respondent Nos.1 to 3 stepped into the shoe of landlords and they determined the tenancy of respondent No.4. As respondent No.4 did not vacate the present suit property, the present suit has been filed.

5. Respondent No.4 opposed the suit stating that he was not tenant under respondent Nos.1 and 2 and never paid rent to them. It is urged that he has handed over the premises to the landlady Smt. Antrajit Kaur on 10.01.2008. It is further urged that late Smt.Amrit Kaur had executed a Will dated 25.08.2006 in favour of her daughter Smt.Antrajit Kaur, i.e. the petitioner. It was urged that Smt. Amrit Kaur had all the rights of exclusive owner on the ground floor in terms of the Will of Late Major Prem Singh dated 01.09.1978. Reliance is placed on Section 14 of the Hindu Succession Act. It was urged that Smt. Amrit Kaur by virtue of the said Section 14 of the Hindu Succession Act, became the owner of the suit property as a provision was made by Late Major Prem Singh.

6. By the impugned order, the trial court concluded that the petitioner is

a necessary and proper party to be impleaded as party to the suit and her presence would be necessary to effectually and completely adjudicate all the questions involved. The petitioner was a party to the probate proceedings which resulted into a letter of administration in favour of respondent Nos.1 and 2. Accordingly, the petitioner was impleaded as defendant No.3. The trial court also restrained the petitioner and respondent No.4 from selling, alienating and disposing off etc. the suit property till further orders or disposal of the suit.

7. The learned counsel appearing for the petitioner has vehemently argued that the present suit has been filed by respondent No.1 against the erstwhile tenant. It is urged that the petitioner has occupied the suit property in her capacity as the owner of the suit property and that in these facts and circumstances, there is no occasion to implead the petitioner as a party to the suit. It is stated that respondent No.1 would have to file the suit for declaration of the title then only the petitioner would be necessary and proper party.

8. The learned counsel for the petitioner has also relied upon the judgment of the Supreme Court in the case of **Anathula Sudhakar v. P.Buchi Reddy, (2008) 4 SCC 594** to contend that where the title of the plaintiff is in dispute, or under a cloud and he is not in possession, the plaintiff will have to file a suit for declaration, possession and injunction.

9. A perusal of the plaint filed by respondent Nos.1 and 2 would show that the reliefs sought for eviction/possession of respondent No.4 from the suit property. The defendant No.4, the husband of the petitioner in an attempt to continue to retain the possession of the suit property had handed over the possession of the suit property to his wife on the plea that pursuant

to the death of mother of the petitioner (Smt.Amrit Kaur), the petitioner has now became the owner of the suit property. The petitioner cannot be allowed to render the suit as infructuous using this device.

10. Order 1 Rule 10(2) CPC reads as follows:

“(2) 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.”

11. In *Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd.*; (2010) 7 SCC 417 the Supreme Court 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.”

12. In ***Ramesh Hiranand Kundanmal vs. Municipal Corporation of Bombay***; (1992) 2 SCC 524 the Supreme Court held as follows:-

“14.The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights.”

13. The petitioner claims the ownership of the suit property in her own right. She has admittedly taken over possession of the property from respondent No.4 who admittedly was inducted as a tenant in the suit property. She has to remain bound by the adjudication that takes place in the suit. Her presence would be necessary to effectually and completely settle

all the issues that arise in the suit. The entire suit would be futile, if she is not impleaded as a party.

14. The judgment of the Supreme Court in the case *Anathula Sudhakar v. P.Buchi Reddy* (supra), is not of much assistance to the petitioner. These are the issues, which the petitioner has to raise at the time of disposal of the suit.

15. In view of the above, there is no infirmity in the impugned order. The present petition is dismissed.

JAYANT NATH, J.

JULY 18, 2016/v