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

+ CM(M) 937/2016

VIRENDER KUMAR

..... Petitioner

Through Mr.Rajat Aneja and Ms.Chandrika
Gupta, Advs.

versus

SUNITA MITTAL & ORS

..... Respondent

Through Mr.Dharmendra Kumar, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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28.09.2016

1. By the present petition the petitioner seeks to impugn the order dated 5.7.2016 by which an application filed by the petitioner under Order 1 Rule 10 CPC was dismissed. When the matter came up for hearing on 20.09.2016 this Court passed the following order:-

“1.By the present petition, the petitioner seeks to impugn the order dated 05.07.2016 by which an application filed by the petitioner under Order 1 Rule 10(2) CPC was dismissed.

2.The present suit is filed by respondent No.1 for declaration, cancellation, possession and permanent injunction. The suit is filed for cancellation of title deed of three properties.

3.The allegation is that respondents No.2, 3 and 4 have defrauded respondent No.1 and effected the sale of the said properties. One of the properties is said to have purchased by respondent No.5. The only allegation against the petitioner, Sub-Registrar is that he has effected the registration of the sale deeds.

4.The learned counsel for the petitioner submits that no relief has been claimed against the petitioner and at best the petitioner would be a material witnesses and not a party.

5. Issue *dasti* notice to the respondents through the counsel appearing for the respondents before the Trial Court, returnable for 28.09.2016.”

2. A perusal of the impugned order shows that the trial court noted that a perusal of the plaint shows that though no specific prayer is sought against the petitioner, however, specific averments and allegations have been levelled against the petitioner and the plaintiff/respondent No.1 has specifically pleaded that the petitioner is in active connivance and collusion with the other defendants. Based on the same the trial court held that the petitioner is a necessary and proper party to the present case.

3. I may note that in this case issues were framed on 5.10.2015. There is no issue where onus is on the petitioner. Admittedly, no relief is claimed against the petitioner. At best he is a witness who would necessarily have to prove the contention of the plaintiff/respondent No.1. He is neither a necessary nor a proper party to the present petition.

4. In the above context, reference may be had to the judgment of the Supreme Court in the case of *M/s Aliji Monoji & Co. v. Lalji Mavji & Ors.*, **AIR 1997 SC 64**, where the Supreme Court 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. Present petition is accordingly allowed and impugned order dated 5.7.2016 is quashed. Petitioner be deleted from the array of parties. Needless to add that respondent No.1 would be at liberty to summon the petitioner as a witness if thought appropriate.

JAYANT NATH, J.

SEPTEMBER 28, 2016/n