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

+ C.R.P. 182/2016

RADHA GARG

..... Petitioner

Through Mr.T.N. Saxena, Mr. H.C.Kharbanda
and Mr. K.K.Bhati, Advocates.

versus

NEENA KAPOOR & ANR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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10.11.2016

CM No. 41760/2016(exemption)

Allowed subject to all just exceptions.

C.R.P. 182/2016 and CM No. 41759/2016 (stay)

1. By the present petition filed under Section 115 CPC, the petitioner seeks to impugn the order dated 10.05.2016 passed by the trial court allowing an application under Order 7 Rule 11 CPC filed by defendant No.2/respondent No.1.

2. The brief facts are that the petitioner has filed the suit for recovery of Rs. 30,08,000/-. It is her stand in the plaint that she purchased the property being ground floor at Govind Puri Extension, Kalkaji New Delhi. She executed a general power of attorney in favour of her brother i.e. defendant No.1/respondent No. 2 for sale/disposal of the said property. She reposed trust and faith on her brother/respondent No.2. In February 2014, the

petitioner got to know that respondent No.2 has sold/disposed of her above said property to respondent No. 1 against a sale consideration of Rs. 20 lacs through a sale deed dated 20.07.2011 on the basis of the GPA executed by the petitioner in favour of respondent No.2. Based on these averments, the present suit has been filed.

3. The trial court by the impugned order noted that the only reason to implead respondent No.1 is that respondent No. 1 at the instance on asking of the petitioner did not disclose the mode of payment made by her to respondent No.2 towards purchase of the property. Ultimately, respondent No.1 did inform the petitioner that the property has been purchased for Rs.20 lacs. The trial court noted that no cause of action has arisen in favour of the petitioner and against respondent No.1. The trial court noted that no relief is claimed against respondent No. 1 and accordingly, deleted respondent No.1 from the array of parties.

4. Learned counsel appearing for the petitioner has taken me through the plaint, especially, para 9 to contend that there is a doubt as to what consideration has been paid by respondent No.1 to respondent No.2. He further submits that full facts are not known to the petitioner and there is a possibility that subsequently information is received of connivance between the respondents.

5. There is no averment in the plaint, especially in para 9 making any allegation that there is any connivance between the respondents or that respondent No.1 is suppressing the exact payment/consideration paid to respondent No.2 for purchase of the property. Even if that was the case, the presence of respondent No.1 would be necessary at best in the capacity of a witness and not as a party. It may be noted that no relief is claimed against

respondent No.1. Therefore he is neither a necessary party nor a proper party to the present petition.

6. In this 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.”

7. There is no material illegality in the orders passed by the trial court to warrant interference by this court. Accordingly, the present petition and all pending applications stand dismissed.

JAYANT NATH, J

NOVEMBER 10, 2016

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