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

% *Date of decision:* 05.10.2016

+ CM(M) 1024/2016

MAYA BHATTACHARJEE

(THR LEGAL REPRESENTATIVES) Petitioner

Through Mr. P K Maitra, Advocate

versus

ANILA DASGUPTA

(THR LEGAL REPRESENTATIVES) Respondent

Through Mr. S K Bhaduri, 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 14.09.2016 by which his application under Order 1 Rule 10 CPC seeking to implead the Land & Development Office, Ministry of Urban Development, Govt. Of India, as a defendant, was dismissed.

2. At the outset, it may be pointed out that the petitioner has not placed on record a copy of plaint. However, from the part record of this court, it is revealed that the petitioner has filed the present suit for specific performance of alleged agreement to sell dated 10.05.1985 for property bearing No.J-1840, Chittaranjan Park, New Delhi. The stand of the petitioner is that an oral agreement to sell this property was entered into with the petitioner for a total price of Rs.2,05,240/- out of which the petitioner claims to have paid vide demand draft dated 21.08.1985 a sum of Rs.50,000/- to the respondent. The respondent has denied existence of any agreement to sell and has denied

that any consideration amount or earnest money or advance of any amount was ever received by her from the petitioner. It further stated that the husband of the petitioner was inducted as a tenant in a portion of the suit property and on the death of her husband the petitioner has filed this false and vexatious suit against the respondent a widow lady staying in Calcutta with a view to usurp the property in suit.

3. The petitioner moved the present application under Order 1 Rule 10 CPC way back in 1991 when the matter was pending before this court. It was averred in the application that the petitioner apprehends that the L&DO will give permission to the respondent to sell or transfer the suit premises to a person who is not an East Pakistan displaced person for the benefit of which class the colony of Chitranjan Park has been set up by the Govt. Of India. Hence, it is stated that the said L&DO be impleaded as defendant no.2 in the suit.

4. The trial court by the impugned order noted that the suit is based on a private agreement between the petitioner and respondent regarding specific performance of contract for sale. L&DO has no role to play in the agreement between two private individuals and dismissed the said application with costs.

5. Learned counsel appearing for the petitioner has strenuously argued that in SLP bearing no. 336/1991 vide order dated 25.10.1990 the Supreme Court had noted that the dismissal of SLP shall not stand in the way of the petitioner herein applying for interim order in the pending suit. He also relies upon an order passed on 23.04.1991 whereby an injunction order was passed against L&DO for granting permission to respondent to sell or transfer the suit property. However, the background of these orders is not sought to be explained.

6. Learned counsel appearing for respondent has however pointed out that along with the present suit the petitioner has filed an application for stay being IA No. 1290/1987. This court where the matter was then pending, on 07.12.1987 dismissed the stay application holding that it is difficult to believe, at this stage, the existence of any agreement to sell as alleged in the plaint by the petitioner especially with regard to the price and the mode of payment. They may have been roving talks but no concluded agreement to sell appears to have been entered into. He points out that subsequently the petitioner filed an IA No. 6171/1991 being a fresh application for stay along with an application under Order 1 Rule 10 CPC being IA No. 1083/1991. He submits that in this fresh application for stay, this court on 23.04.1991 erroneously passed an order restraining defendant no.2 from granting permission to defendant no.1 to sell or transfer the suit property. There is no defendant no.2 in the suit and the court has wrongly accepted the contentions of the petitioner as L&DO was proposed to be impleaded as defendant no.2, though the application for impleadment was pending.

7. I may note that though the suit is filed way back in 1987, evidence is yet to commence.

8. We may see whether the L&DO would be a necessary and proper party.

9. Order I 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.”

10. Hence, the Court may at any stage strike out the name of any party who has been improperly joined or such person may be joined whose presence before the Court is necessary in order to enable the Court to fully or completely adjudicate upon and settle the questions.

11. In *Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd.*; 2007 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)2SCC524 the Supreme Court held as follows:-

“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. Hence, a proper party is a party whose presence would enable the court to completely, effectively and adequately adjudicate on all matters in dispute. In the present case, there is an alleged agreement to sell between the petitioner and the respondent. The presence of L&DO is not necessary to adjudicate upon any of the issues which are raised in the present suit. Merely because some permission may be given to the respondents, who are the LRs of original owner of the suit property to effect sale of property to a third party, cannot be a ground to implead the said L&DO. The grant of permission by L&DO does not in any manner dilute the stand of the petitioner i.e. that there exist an oral agreement to sell between him and the original owner of the property and the original owner/LRs are in default of the agreement to sell etc. In fact, this application appears to be an attempt to

over reach the order of this court whereby an injunction application filed by the petitioner was dismissed on 07.12.1987. This court had dismissed IA No.1290/1987 filed by the petitioner under Order 39 Rule 1 & 2 CPC holding that it is difficult to believe at this stage the existence of any agreement to sell as alleged in the plaint especially in regard to the price and the mode of payment of the same. Order noted that at best there may have been roving talks but not a concluded agreement to sell. Hence, the application is dismissed. To overcome this order, it appears that the present application under Order 1 Rule 10 CPC was filed. L&DO would neither be a necessary nor proper party. The present petition is without any merit. Hence, the same is dismissed.

JAYANT NATH, J.

OCTOBER 05, 2016/ 'raj'