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

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Date of Decision: 09.11.2016

+ CM(M) 1080/2016

AMIT VED

..... Petitioner

Through

Mr. Amarjeet Singh Sahni, Advocate.

versus

GULJINDER SINGH & ANR

..... Respondents

Through

Mr. Arav Kapoor, Advocate for R-2..

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM No. 39626-27/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 1080/2016 and CM No. 39625/2016 (stay)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 01.09.2016 by which an application filed by the petitioner under Order 1 Rule 10 CPC was dismissed.
2. Respondent No.1 has filed the suit against respondent No.2 for mandatory injunction. In the suit, it is prayed that respondent No. 2 be directed to re-install the electricity meter or install a new electricity meter and restore the electricity supply. As per the plaint, respondent No. 1 states that his grandfather late Sh. Gurbux Singh was the tenant of the owner Shree

Rishyanand Trust whose whereabouts are not known. It is stated that Sh.Gurbux Singh was running his furniture and interior decoration business from the suit property and he had an electricity connection in his own name. It is further stated that respondent No.1 has been regularly paying electricity bills. Later on, he also obtained an electricity connection in his own name but by a typographical mistake, there was an error and instead of writing the correct address i.e. “J-5”, NDPL the electricity company has inadvertently mentioned it as “J-15”.

3. The petitioner has moved the present application under Order 1 Rule 10 CPC claiming that the applicant is the owner of the suit property. It is stated that originally Swami Nirbhayanand had purchased this property for one Sh.Wazir Chand Kapoor vide a registered Sale Deed dated 08.02.1956. Swami Nirbhayanand during his life executed a Will dated 17.10.1970 in favour of Sh. Ved Prakash, the father of the applicant. On the death of Swami Nirbhayanand, the father of the applicant became the owner of the property. After the death of his father, the applicant claims to have become the owner of the property.

4. Learned counsel for the petitioner submits that respondent No. 1 has played a fraud on respondent No.2 and also on the petitioner. He submits that by misleading and in connivance with respondent No. 2, electricity connection has been obtained by a random trespasser. He submits that they have deliberately applied for electricity connection using the address “J-15” and have obtained electricity connection in the present premises being “J-5”. He admits that previously respondent No. 1 was the tenant but states that now the tenancy has come to an end and a suit for eviction has been filed against respondent No.1. He also submits that a petition under Section 340

Cr.P.C. has also been filed which would also become infructuous unless the application of the petitioner is allowed.

5. The trial court by the impugned order noted that no dispute of title is involved in the present suit. Respondent No. 1 is only claiming himself to be the tenant of the suit property though through a different landlord. The suit being for injunction simplicitor cannot be converted into a suit for declaration of title of the applicant. It also noted the judgment of the Supreme Court in the case of *Meena Chaudhary @ Meena P.N. Singh vs. BSES Rajdhani Power Ltd. & Anr. in W.P.(Crl.) No. 103 of 2013* decided on 25.06.2013 to hold that an occupier of a premises is entitled to as of his own right electricity under Section 43 of the Electricity Act. It also noted that mere grant of electricity connection to respondent No.1, the person who is in settled possession would not become the owner of the property. No prejudice would be caused to the petitioner.

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

“10. Suit in name of wrong plaintiff.- (1)

(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.”

7. 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.

8. 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.”

9. 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 my opinion, the petitioner is neither a necessary nor a proper party. The suit for injunction/for restoration of electricity supply cannot be converted into a landlord tenant dispute between the petitioner and respondent No. 1. There is no infirmity in the impugned order.

10. Accordingly, the present petition and all pending applications, if any, stand dismissed.

JAYANT NATH, J

NOVEMBER 09, 2016

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