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

% *Date of decision:* 28.02.2017

+ C.R.P. 51/2017 & CM Nos.8123-124/2017

MANJU GUPTA Petitioner

Through Mr.Amit Swami, Advocate

versus

DAYA RAM & ORS Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present petition filed under Section 115 read with Section 151 CPC, the petitioner seeks to impugn the order dated 25.10.2016 by which his application filed under Order 1 Rule 10 CPC was dismissed.
2. The present suit is filed by the plaintiff/respondent No.1 for possession, recovery, damages and mesne profits. It is contended in the plaint that the property was purchased by Sh.Naresh Chand Gupta. The property was occupied by various tenants/trespassers. It is further stated that defendants/respondents No.2 to 5 are the trespassers in the property. Respondent No.1/plaintiff claims title through alleged Will and Power of Attorney which is said to have been executed by Sh.Naresh Chand Gupta measuring for area 150 sq.yds. in his favour. Hence, the suit for possession.
3. The petitioner has moved this application under Order 1 Rule 10 CPC claiming that he is the actual owner of the entire property by virtue of a registered Will and General Power of Attorney dated 30.01.1999 executed

by Sh.Naresh Chand Gupta. Hence he seeks impleadment by stating that he is the necessary and proper party.

4. The trial court by the impugned order dismissed the said application holding that the plaintiff is *dominus litus*. He is the best judge to determine his own interest. It also noted that the petitioner is not in possession of the suit property. Further by impleading the petitioner, the basic nature of the suit would be completely change the lis of the suit. For the purpose of adjudication of the lis in the suit the presence of the applicant was not necessary.

5. I have heard the learned counsel for the petitioner.

6. 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.”

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.***; (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.”

9. 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.”

10. 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 is filed for possession. By introducing the petitioner in the suit, the suit will become a title suit between the plaintiff/respondent No.1 and the petitioner. The entire nature of the case would be changed.

11. There are no reasons to interfere with the impugned order. The petition and all the pending applications are dismissed.

JAYANT NATH, J.

FEBRUARY 28, 2017/v