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

+ CM(M) 293/2017

SAROJ

..... Petitioner

Through Mr.I.J.S.Mehra and Ms.Tabbassum
Firdausi, Advocates

versus

RITU KAPILA

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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15.03.2017

CM No.10048/2017

Exemption allowed, subject to all just exceptions.

CM(M) 293/2017 & CM No.10047/2017 (stay)

An advance notice of the petition has been served on the respondent.

But none has appeared on behalf of the respondent.

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 21.02.2017 by which an application filed by the petitioner under Order I Rule 10 CPC for imleadment of Shri Sharwan Kumar as a tenant was dismissed. The respondent/plaintiff has filed the suit for possession, permanent and mandatory injunction and recovery of Rs.5,64,000/- being usage and occupation charges/mesne profits and damages. The case of the respondent in the plaint is that she is the owner of the suit property and that the petitioner is a tenant of the second floor of the suit property w.e.f.

01.02.2012. It is further stated that the petitioner has unauthorisedly by breaking the lock of ground floor and first floor and also breaking the lock of the shutter of the office-cum-shop at the ground floor has gained unlawful possession of the balance area. Hence, the suit seeks a decree of possession for the entire suit property.

2. The petitioner moved an application under Order I Rule 10 CPC. In the application it is urged that Shri Sharwan Kumar is a practising lawyer and he had been engaged for the purpose of filing a claim petition against the employer of her deceased husband. The petitioner has also lodged a case under section 376 IPC against the said Shri Sharwan Kumar. It is urged that in good faith and reposing confidence in the said Shri Sharwan Kumar and due to intimacy developed with him on an assurance of marriage the petitioner had paid a sum of Rs.2 lacs to the said person for purchasing a plot. However, instead of purchasing the said plot in the name of the petitioner, he has fraudulently and mischievously purchased a plot in his own name. It is urged that a suit has been filed by the petitioner for declaration and permanent injunction against Shri Sharwan Kumar which is pending. The petitioner also seeks to place reliance on a compromise allegedly executed between Shri Sharwan Kumar and the petitioner. In view of these facts and circumstances it is prayed that the said Shri Sharwan Kumar is a necessary and proper party.

3. The trial court by the impugned order dismissed the application holding that plaintiff is *dominus litis*. The petitioner cannot force the respondent to implead someone who is not a necessary or a proper party. It is further concluded that the addition of the said Shri Sharwan Kumar as a defendant will alter the nature of the suit and introduce a new cause of

action.

4. I have heard learned counsel appearing for the petitioner. He has strenuously reiterated that Shri Sharwan Kumar is a necessary and proper party. The suit is filed by the respondent for possession based on the argument that the petitioner is a tenant of the respondent. What the petitioner seeks to do is to convert the present suit for eviction of a tenant filed by the respondent into a title dispute between her and the said Shri Sharwan Kumar. Clearly the entire nature of the suit would completely undergo a change. There are no reasons to interfere with the impugned order.

5. Petition is dismissed. All pending applications, if any, also stand disposed of accordingly

JAYANT NATH, J

MARCH 15, 2017

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