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

+ CM(M) 394/2016

OM PARKASH & ORS Petitioners
Through: Mr.S.S.Parashar, Advocate.

versus

NATIONAL CAPITAL
TERRITORY OF DELHI & ORS Respondents
Through: Mr.Bhanu Gupta & Mr.Ankur
Chibber, Advocates for R-1 to 3.
Mr.Raghubir Singh Rana, Advocate
for R-6.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
03.05.2017

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1. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India with a prayer that the order dated 19th December, 2015 allowing impleadment of Sh.Sri Ram as a party may be set aside.
2. The petitioner is aggrieved by the order dated 19th December, 2015 whereby the learned Trial Court allowed the application under Order I Rule 10 CPC filed by Sh.Sri Ram for his impleadment in Suit No.445/2012.
3. Notice of the petition was sent to the respondents.
4. While respondent Nos.1 to 5 are National Capital Territory of Delhi (Govt. of Delhi) through Chief Secretary to the Government of Delhi (Respondent No.1), Deputy Commissioner (North West), District

Kanjhawala, Office of the Deputy Commissioner (North West) Kanjhawala, Delhi (Respondent No.2), Revenue Asstt./SDM (Narela) M.P.C.C. Building, District North, Delhi-110082 (Respondent No.3) & Gram Sabha, Village Khera Khurd, Delhi, through B.D.O. (North-West), M.P.C.C. Building, Naya Bans, Delhi (Respondent No.4), Map-Age Infrastructure Pvt. Ltd., Branch Office 9/57, Sector-9, Eklavya Vihar, Ghaziabad (UP), Through its Director (respondent No.5), respondent No.6 is the only contesting respondent in this petition.

5. The Civil Suit No.445/2012 was filed by the petitioner/plaintiff against respondent No.1 to 5 praying for a decree of declaration and mandatory injunction and damages. The declaration was sought in respect of the act of demolition carried out by respondent Nos. 1 to 3 as null and void to restrain respondent Nos.1 to 5 from constructing the road on the area where demolition has been carried out.

6. During the pendency of the suit respondent No.6/applicant filed an application under Order I Rule 10 CPC seeking his impleadment as defendant alleging that the demarcation report dated 7th February, 2011 and order dated 23rd August, 2011 of the revenue authorities have not been implemented. The application was contested by the petitioner/plaintiff questioning the locus standi of the applicant/respondent No.6/Sh.Sri Ram.

7. Learned Trial Court vide impugned order allowed the application for the following reasons:

*“By way of present application under Order I Rule 10, the applicant wants to impleaded as a defendant being a necessary party on th ground that his right would be defeated if the plaintiff is allowed to encroach upon the rasta/public passage. He relied upon the Jugment of Supreme Court in the matter **Swaran Singh and Ors. vs. State of Punjab**, AIR 1994, Supreme Court 2301.*

On this application, it is observed here that the present suit is for declaration, mandatory injunction with damages whereby the plaintiff has sought compensation from the defendants for demolition of his house and to stop the defendants from constructing road over the cleared land. Declaration has also been sought that demolition by the defendants are null and void.

The applicant has a right of way on the land which was allegedly encroached upon and was cleared thereafter. The applicant had also made applications to the concerned Revenue Authority for inspection and demarcation of the public way. Accordingly, any declaration by the Court to declare the demolition as null and void would certainly have an effect on the right of the applicant to have access to the public passage. Accordingly, applicant is one of the necessary party in the proceedings. Accordingly, he is impleaded as defendant in the present suit. The plaintiff is directed to file amended memo of parties.”

8. Learned counsel for the petitioner has contended before the Court that in the Civil Suit No.445/2012 filed by the petitioner against respondent Nos.1 to 5, respondent No.6 has been unnecessarily impleaded though he has no right or interest in the said property.

9. The scope of power of this Court under Article 227 of the Constitution well settled which are not in the nature of appellate jurisdiction. The extent and scope of power with this Court is limited and restrictive in nature, and in the normal circumstance, it is exercised where there is want of jurisdiction, error of law or perverse findings by the trial Court. This court would not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity. Thus, in the absence of there being any material illegality or perversity, the order of the court below is not to be faulted with or interfered with by this court in its supervisory power under Article 227.

10. The principles governing impleadment as well who is a necessary and proper party, have come up for consideration before the Supreme Court in Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre and Hotels Pvt. Ltd. & Ors. (2010) 7 SCC 417 wherein it was held as under :

8. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

Court may strike out or add parties.

(2) 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.

The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is

found to be a necessary party or proper party. 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 disputes 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.'

11. When the case of the petitioner is examined in view of the above legal position, the learned Trial Court has given reasons for necessitating the impleadment of the applicant/respondent No.6 as a party in the said case. The discretion exercised by the Court while allowing the application under Order I Rule 10 CPC does not suffer from any kind of illegality or perversity requiring interference by this Court in exercise of its extraordinary jurisdiction under Article 227 of the Constitution of India.

12. The petition is dismissed.

CM No.15193/2016 (stay)

Dismissed as infructuous

PRATIBHA RANI, J.

MAY 03, 2017

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