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

+ CM(M) 844/2016 & CM No.31543/2016 (stay)

ZILE SINGH

..... Petitioner

Through Mr.Anuj Kumar Garg, Advocate

versus

SANTOSH @ SANTRA & ORS

..... Respondent

Through Mr.Vineet Mehta and Mr.Mohit
Chaddha, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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15.03.2017

CM(M) 844/2016 & CM No.31543/2016 (stay)

1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 12.7.2016 by which an application under Order I Rule 10 (2) CPC filed by the applicant Ms.Neha Gupta for being impleaded as a party was allowed. The petitioner has filed the suit for mandatory and perpetual injunction and demurrage charges for use and occupation against the respondents. The petition is seeking a perpetual injunction to restrain the defendants not to sell, transfer or create third party interest in the suit property forming part of property Number WZ-515, Ground Floor, Naraina Village, Delhi and a mandatory injunction against the said defendants No.1, 2 and 3 to hand over vacant and peaceful possession of the suit property.

2. As per the plaint the case of the petitioner is that Shri Shankar was the

owner of the property in Naraina Village measuring 90 sq. yards. Shri Shankar was survived by his sons Shri Raghubir Singh, Zile Singh (Plaintiff/petitioner) and late Shri Jagdish Prasad. Shri Jagdish Prasad has also passed away leaving behind his two sons (respondents No.5 and 6). It is further urged that during his lifetime Shri Shankar the father of the petitioner had executed a registered Will dated 6.1.1998 whereby he bequeathed 75% of the undivided share of the aforesaid property in favour of the petitioner and balance 25% undivided share was bequeathed in favour of the other son Shri Jagdish who is now survived by respondents No.5 and 6. No rights in the property was left to the third son Raghubir Singh.

3. Respondents No.1 and 2 are the daughters of Shri Raghubir Singh. Respondent No.4 Ms.Neha Gupta moved an application under Order I Rule 10 CPC stating that she is the bona fide purchaser of the property vide registered sale deed dated 15.9.2015 from its bona fide legal owners Smt.Santosh and Smt.Kavita daughters of Raghubir Singh who are respondents No.1 and 2 herein.

4. The trial court by the impugned order noted that the case of the applicant is that respondents No.1 and 2 have sold to her their share and she is in occupation of part of the suit property. Hence, any question of alleged legality of the said sale transaction can be challenged in the present suit or by way of a separate suit and cannot be adjudicated upon at this stage of the proceedings. The trial court impleaded the applicant as defendant No.6.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioner has submitted that a outsider cannot be impleaded in the present suit which pertains to a family property. It is further urged that at best and even otherwise the petitioner can only have a

right as stated under Order 22 Rule 10 CPC and would not fall within the definition of necessary and proper party under Order I Rule 10 (2) CPC. Learned counsel for the applicant/respondent No.4 submits that they have no objection in case they are transposed in terms of Order 22 Rule 10 CPC. I may note that despite service none has appeared for respondents No.1 and 2 i.e. the persons who have sold the property to respondent No.4/applicant. I may also note that respondent No.3 has not been served. I am told that she is proceeded ex parte before the trial court and in any case has no concern to the controversy which is subject matter of the present petition.

7. Order 22 Rule 10 CPC reads as follows:-

“ 10.Procedure in case of assignment before final order in suit.-

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a Suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal there from shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).”

8. Hence, in case of an assignment, creation or devolution of any interest during pendency of the suit, the suit can be continued by or against the person to or upon whom interest has been devolved. In my opinion, this is the appropriate provision applicable to the facts of the case and would be the proper provision to bring respondent No.4 on record. Impleadment as a party would not be warranted in the facts and circumstances of the case inasmuch as the said respondent No.4 would neither be a necessary nor a proper party as envisaged under Order 1 Rule 10(2) CPC.

9. Accordingly, it is manifest that the impugned order suffers from

material irregularity. I modify the said order and transpose respondent No.4 in place of respondents No.1 and 2 in terms of Order 22 Rule 10 CPC.

10. Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

MARCH 15, 2017

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