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

% *Date of Decision: May 17, 2017*

+ **CM(M) No.547/2017**

SHITIJE JAIN

..... Petitioner

Through: Mr.Vikrant Bhardwaj, Advocate

versus

BALBIR SINGH & ANR

..... Respondents

Through: None

**CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI**

JUDGMENT (Oral)

CM No.18638/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CM(M) 547/2017

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India by assailing the order dated 31st March, 2017 whereby the application filed by him for his impleadment in RCA No.61245/2016 titled as Balbir Singh Vs. Padam Chand Jain has been dismissed.

2. Perusal of the record reveals that Civil Suit No. 55/2014 was filed by Sh.Padam Chand Jain seeking a decree of possession against the tenant Sh.Balbir Singh claiming himself to be the landlord and joint owner of the

suit property bearing no.E-2/4, Main Bazar Road, Shastri Nagar, Delhi-110052 along with Ms.Seema Jain. As per the averments made by the plaintiff, Sh.Padam Chand Jain the defendant/tenant Sh.Balbir Singh was inducted as a tenant in respect of a hall (shown in red colour in the site plan) on the ground floor of the suit property vide rent deed dated 1st June, 2000. The rate of rent was ₹10,000/- per month. The tenancy was terminated vide notice dated 19th May, 2006 and thereafter, the suit for possession was filed.

3. The suit filed by the plaintiff was decreed vide judgment and decree dated 2nd June, 2015 which was passed by the Court in terms of the Order XII Rule 6 CPC. The said judgement and decree was challenged by the defendant/tenant by filing RCA No. 61245/2016. During the pendency of the suit the plaintiff Sh.Padam Chand Jain transferred his 50% share in the suit property in favour of his daughter Ms.Sunita Jain by virtue of gift deed dated 5th July, 2013.

4. On an application being filed under Order XXII Rule 10 CPC, vide order dated 22nd May, 2015, Sunita Jain was substituted as plaintiff.

5. The petitioner/applicant filed an application under Order I Rule 10 CPC claiming himself to be the co-owner of the suit property and having half share therein thereby seeking his impleadment in the appeal as a necessary party.

6. The learned trial Court after discussing the legal position on the subject of impleadment under order I Rule 10(2) CPC, dismissed the application for the following reasons:-

- (i) The applicant was claiming his title on the basis of an unregistered document and genuineness of the same was also questioned.
- (ii) The applicant cannot claim himself to be the co-owner on the basis of an unregistered documents, hence could not establish his title in legal

proceedings.

(iii) In the Civil Suit the litigation was between co-landlord and a defaulting tenant. The co-landlord transferred his share in favour of Ms.Sunita Jain by virtue of gift deed dated 5th July, 2013 and she was substituted as plaintiff. In a landlord-tenant dispute title of the third party is not required to be determined. Presence of the applicant is not necessary to decide the controversy involved in the suit.

7. Learned counsel for the petitioner has submitted that Sh.Padam Chand Jain sold his 50% share to his son, Vijay Kumar Jain. The said 50% share was further sold by Sh.Vijay Kumar Jain to Sh.Vinod Jain vide sale document dated 12th May, 2004. Sh.Vinod Kumar Jain has expired leaving behind an unregistered Will dated 23rd November, 2015 in favour of the applicant Sh.Shitije Jain on the basis of which Sh.Shitije Jain has become co-owner hence necessary party in the appeal.

8. The submissions made on behalf of the petitioner are legally not tenable. The petitioner cannot claim any legal right in respect of the suit property on the basis of an unregistered Will in favour of Sh.Vinod Jain for the reason that the alleged sale transaction by Sh.Padam Chand Jain in favour of Sh.Vijay Kumar Jain, and thereafter by Sh.Vijay Kumar Jain in favour of Sh.Vinod Jain, vide unregistered documents. It is settled position that no title in the immovable property can be conferred on the basis of unregistered and insufficiently stamped documents.

9. In the landlord/tenant litigation, the judgment and decree has been passed by the learned trial Court on the basis of an admission, by invoking provisions of Order XII Rule 6 CPC.

10. It being a case of landlord/joint owner seeking possession from the defendant/tenant after terminating the tenancy, the applicant was neither a

necessary nor a property party in the said litigation.

11. The learned Appellate Court has rightly held that the litigation between the landlord and tenant cannot be converted into a title suit between the rival claimants. It is settled law that in order to implead a party to the suit, it must be shown that there is some right to relief against such party in respect of the controversy involved in the proceedings and that no effective decree can be passed in his absence.

12. A reference may also be made to the decision of the Supreme Court reported as *Ramesh Hirachand Kundanmal v Municipal Corporation of Greater Bombay* 1992 (2) SCC 224. In the said case, the plaintiff was a dealer on the land held by the Hindustan Petroleum Corporation and was in possession of a service station. The Municipal Corporation issued a notice to the plaintiff for demolition of a certain construction alleging that it was unauthorized. The plaintiff filed a suit for permanent injunction against the Municipal Corporation. Hindustan Petroleum applied for being impleaded as a defendant on the ground that it had material to show that the structure was unauthorized. The prayer was granted by the Courts below. The plaintiff approached the Supreme Court while allowing the appeal and setting aside the order, the Supreme Court held that the Hindustan Petroleum Corporation was neither necessary nor proper party to the proceedings. It was held that the person to be joined must be one whose presence is necessary as a party. The test is not whether his presence is necessary for the correct solution of the dispute before the Court but whether the order would affect him or his interest would be prejudiced. Relevant discussion is being noted herein below:-

“6. Sub-rule(2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected

by the RFA (OS) 86/1998 Page 12 of 50 inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touch stone of Order I Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

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8. The case really turns on the true construction of the Rule in particular the meaning of the words "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." The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the Rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the Court has power to join intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

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14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What

makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is 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. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael Tuck & Sons Ltd. (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A. v. Bank of England (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:

The test is 'May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights.'

13. The test which is to be applied, while considering an application under Order I Rule 10(2) of the Code of Civil Procedure for impleadment of a party has been summarised in the decision of the Madhya Pradesh High

Court reported as Sampatbai v Madhusingh Gambhirji AIR 1960 MP 84 as under:-

“The test is not whether the joinder of the person proposed to be added as a defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the plaintiff. It is whether the relief claimed by the plaintiff will directly affect the intervenor in the enjoyment of his rights. It is not enough that the plaintiff's rights, and rights which the person desiring to be made a defendant wishes to assert should be connected with the same subject-matter. The intervenor must be directly and legally interested in the answers to the questions involved in the case. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally -- that is by curtailing his legal rights. This is the test which has been applied in Amon v. Raphael Tuck and Sons Ltd., 1956-1 All ER 273, in connection with R.S.C. Order 16, Rule 11 which is similar to Order 1, Rule 10, C. P. C. Again as pointed out in Dollfus Mieg et Compagnie S.A.V. Bank of England, 1950-2 All ER 605 at p. 611, in determining whether or not an applicant has a proprietary right in the subject matter of an action sufficient to entitle him to be joined as a defendant the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established”.

14. Since the order impugned herein has been passed in correct legal perspective, the order of the Court below does not require any interference by this Court so as to exercise power under Article 227 of the Constitution of India.

15. The petition is dismissed.

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Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 17, 2017

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