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

+ C.R.P. 119/2017

RAMESH CHANDER & ANR

..... Petitioners

Through: Ms.Sanya Kapur & Mr.Sagar
Aggarwal, Advocates.

versus

DEVENDER & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **22.05.2017**

CM No.19627/2017 & CM No.19629/2017

1. Exemption allowed, subject to all just exceptions.
2. The applications are disposed of.

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1. Civil Suit No.368/2016 was filed by Sh.Devender Kumar & Sh.Sanjay Singh impleading Sh.Pradeep Goel as defendant No.1 against whom the relief of possession and injunction has been prayed.
2. Sh.Ramesh Chander, SHO, PS Mundka, & Sh.Balwan Singh, ASI, PS Mundka were impleaded as defendant Nos.2 & 3. The averments made against the petitioners/defendants No.1 and 2 are about they being in a conspiracy with defendant No.1 and the plaintiff being threatened by them and by putting the plaintiff's in fear of false implication, obtained from the plaintiffs in writing that they were not in possession of the suit property.
3. Learned counsel for the petitioners representing defendant Nos. 2 & 3 has submitted that in the entire plaint no relief has been claimed against these two police officers who were only discharging their official duty and had nothing to do with the subject matter of the said civil suit. Hence they

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are neither necessary nor proper party.

4. Learned counsel for the petitioner has submitted that the impugned order dated 5th April, 2017 passed by the learned Trial Court whereby the application under Order I Rule 10 CPC has been dismissed on the ground that petitioners/defendant Nos.2 & 3 are proper party, is illegal and perverse. It has also been contended that the petitioner No.1 has retired and is a senior citizen. The petitioners were only discharging their official duties and have been unnecessarily dragged in this litigation, hence their name may be deleted.

5. Learned Trial Court vide impugned order has specifically noted the above contention and observed as under:-

'A bare perusal of the plaint would show that there are specific allegations against defendant nos.2 & 3 in the plaint. Even though no relief has been claimed against the defendant nos.2 & 3 but the presence of the defendant nos.2 & 3 would be beneficial for the Court and would assist the Court fully and completely adjudicating the dispute between the parties. The defendant nos.2 & 3 may not be necessary parties to the suit but nevertheless they are proper parties to the suit. Hence, the applications filed by defendant Nos.2 and 3 are dismissed. Both the applications stands disposed of accordingly.'

6. As a general principle of law, the plaintiff being *dominus litus* it is for him to choose the persons against whom he wants to litigate but this general rule is subject to the provisions of Order I Rule 10 Code of Civil Procedure which provide for impleadment of proper and necessary parties. This provision confers a power on the Court to direct addition of a person who ought to have been joined as a party to the suit but has not been joined or a person whose presence before the Court may be necessary nor enable it to effectively and completely adjudicate upon and settle the questions involved

in the suit as a party to the suit.

7. The petitioners herein have not only been impleaded as defendant Nos. 2 & 3 in this case but a complaint case bearing No.33/01/2012 of PS Mundka under Section 120B/384/506(i)/34 IPC titled as *Devender vs. Pradeep Goel & Ors.* was also filed wherein the petitioner no.1, Sh.Ramesh Chander, the then SHO, was summoned as an accused. The summoning order was impugned by filing C.R.No.8/2015 which was allowed by learned Additional Sessions Judge and vide order dated 14th December, 2015 the summoning order was quashed qua this petitioner Sh.Ramesh Chander, the then SHO.

8. It is not disputed that no relief has been claimed against the petitioners. The contention of the learned counsel for the petitioner that petitioners have been unnecessarily dragged, is contrary to the record in view of the averments made paras 5 to 10 of the plaint.

9. Learned Trial Court has considered the petitioners as proper party and dismissed the application under Order I Rule 10 CPC. Once this discretion is exercised by the learned Trial Court, within the limited scope of Article 227 of the Constitution of India this Court is not required to interfere into the exercise of discretion that the petitioners cannot be deleted from the array of parties being proper parties for complete adjudication of the case.

10. The impugned order does not suffer from any illegality or perversity and the same is hereby dismissed.

CM No.19628/2017 (stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 22, 2017

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