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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CM(M) No.759/2017 & CM No.25750/2017 (for stay).
VINOD KUMAR Petitioner
Through: Mr. M. S. Khan, Adv.
versus
SUDESH RANI & ORS Respondents
Through: None.
AND
+ CM(M) No.761/2017 & CM No.25823/2017 (for stay).
VINOD KUMAR Petitioner
Through: Mr. M.S. Khan, Adv.
versus
NIRMALA DEVI & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **24.07.2017**

CM No.25751/2017 & CM No.25752/2017 (both for exemption) in CM(M) No.759/2017 and CM No.25824/2017 & CM No.25825/2017 (both for exemption) in CM(M) No.761/2017.

1. Allowed, subject to just exceptions.
2. The CMs stand disposed of.

CM(M) No.759/2017 & CM No.25750/2017 (for stay) and CM(M) No.761/2017 & CM No.25823/2017 (for stay).

3. These two petitions are preferred by the same person, with CM(M) No.759/2017 impugning the order dated 2nd June, 2017 in CS No.58473/16 of the Court of Additional District Judge-02 (North), Rohini, Delhi allowing the application of the respondents no.1,2&3 namely Sudesh Rani, Vineeta Garg and Prithvi Raj for impleadment in the suit and CM(M) No.761/17 impugning the order also dated 2nd June, 2017 of the same learned

Additional District Judge but in CS No57965/16 of dismissal of the application of the petitioner for impleadment in that suit.

4. The petitioner claims to be one of the successors in interest of the deceased owner of an immoveable property and has filed the suit from which CM(M) No.759/2017 arises (i) for recovery of possession of his share of the property; (ii) for permanent injunction to restrain the defendants from creating third party interest in the property; (iii) for mandatory injunction directing the defendants to deposit the original documents relating to the property in the Court; and, (iv) for declaration that the petitioner and the other defendants have inherited the property with each having 1/7th share therein.

5. The suit from which CM(M) No.761/2017 arises has been filed by another heir of the common predecessor for setting-aside of the Sale Deed executed by another heir of part of the property and for recovery of possession thereof. The petitioner applied for impleadment in the said suit and which has been declined observing that the petitioner having filed his own suit (subject matter of CM(M) No.759/2017), his rights are fully protected.

6. I have enquired from the counsel for the petitioner, whether the petitioner is supporting the Sale Deed impugned in the suit subject matter of CM(M) No.761/2017.

7. The counsel for the petitioner replies in the negative.

8. I have next enquired from the counsel for the petitioner that if that be so, why does the petitioner need to be a party to that suit.

9. The counsel for the petitioner states that since the relief of possession has also been claimed, the petitioner does not desire that the plaintiff in the suit subject matter of CM(M) No.761/2017, on succeeding in the suit takes possession to the exclusion of the petitioner.

10. The petitioner having filed his own suit (from which CM(M) No.759/2017 arises), can seek appropriate orders in this regard in his suit. Rather, it has transpired that there is already interim order of *status quo* in the said suit.

11. The counsel for the petitioner next states that the petitioner apprehends that the plaintiff in the suit subject matter of CM(M) No.761/2017 may compromise with the purchaser. Even if that be so, the same would not prejudice the petitioner as the petitioner is not a party to the suit subject matter of CM(M) No.761/2017.

12. There is thus no error in the order impugned in CM(M) No.761/2017 which is dismissed.

13. As far as CM(M) No.759/2017 is concerned, the respondents no.1,2&3 namely Sudesh Rani, Vineeta Garg and Prithvi Raj who have been impleaded, are admittedly purchasers of the property from other heirs of the common ancestor.

14. The said purchasers, even if through the medium of agreement to sell, power of attorney, Will etc, would definitely be interested in contesting the suit in which the petitioner is claiming rights with respect to the property. In fact the other heirs, who have already transferred and sold the property to the respondents no.1,2&3, may not even be interested in contesting the suit and in which case the petitioner may get a walkover in the suit, to the

prejudice of respondents No.1,2&3.

15. Thus the order allowing impleadment of respondents no.1,2&3 namely Sudesh Rani, Vineeta Garg and Prithvi Raj in suit subject matter of CM(M) No.759/2017 is found to be in accordance with law and requiring no interference. Resultantly CM(M) No.759/2017 is also dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 24, 2017

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