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

% *Date of decision:* 01.02.2017

+ CM(M) 942/2015 & CM No.22579/2015

SHIV NARAYAN BHARDWAJ & ANR Petitioners
Through Mr. L. Ganguli and Mr. Ajay Kumar,
Advocate for the petitioners.

Versus

M/S RAMAN EDUCATIONAL WELFARE
SOCIETY & ORS Respondents
Through Mr. J. P. Sengh, Sr. Advocate with
Mr. Ravinder Narwal, Mr. Rajinder
Chawla, Mr. Naresh Chahar &
Ms. Manisha Mehta, Advocates for
the respondent.
Mr. Smita Maan, Advocate for R-3

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. The present petition under Article 227 of the Constitution of India is filed seeking to challenge the order dated 18.9.2015 passed by the trial court allowing the application of the applicant/respondent No.3 under Order 1 Rule 10 CPC for being impleaded as party.
2. The petitioners have filed a suit against respondents No.1 and 2 for possession, recovery of rent, mesne profit and damages etc. The suit pertains to property measuring 2500 sq.yds situated in khasra No. 14/19 village Mubarakpur Dabas, Delhi. It is contended in the plaint that respondent No.1

was inducted as a tenant on a monthly rent of Rs.25000/- by virtue of a registered lease deed dated 1.1.2010. It is further stated that there were certain manipulations in the lease especially Clause 4, which was done by respondents No.1 and 2. Hence the suit has been filed by the petitioner.

3. Respondent No.3 filed an application stating that on 24.7.2015, he came to know about the pendency of the suit. He states that he had purchased the said land from one Smt. Kishni Devi on 6.11.1997 through petitioner No.1 who claimed that he is the relative of the said Kishni Devi. Documents like agreement to sell, general power of attorney, receipt etc., are said to have been executed, on the strength of which said respondent No.3 claims title to the property. It is further stated that he took possession of the property and in October 2002, the plot that was lying vacant was given on rent to respondent No.1 on monthly rent of Rs.5000/-. It is claimed that the rent has been paid by the said respondent No.1 to the applicant/respondent No.3. Hence, it was pleaded that the applicant/respondent No.3 being the lawful owner of the suit property is a necessary party to the present suit. It was also stated that a suit for mandatory injunction is pending in the court in which respondent No.1 and petitioner No.1 are the parties.

4. The petitioners filed a reply denying the title of respondent No.3 claiming that on 6.10.1997 the petitioners purchased two plots from said Smt. Kishni Devi against lawful consideration and execution of the same type of documents, namely, GPA, agreement to sell etc. It was claimed that GPA and Will were registered before the office of the Sub-Registrar. Various other allegations were also made against the respondents.

5. By the impugned order, the trial court concluded that allegations and counter allegations are being raised by both the parties against each other

which require evidence. The matter being at the initial stage, the impleadment of the applicant would not have much effect to further settle the controversy addressed. It held that not impleading respondent No.3 as party would open as pandora's box and hence allowed the application of respondent No.3.

6. I have heard the learned counsel appearing for the parties.

7. Learned counsel appearing for the petitioner relies upon ***J.J. Lal Pvt. Ltd. and Ors. vs. M.R. Murali and Anr. (2002) 3 SCC 98***; and ***Arvinder Kaur Sethi vs. Akshay Chhabra & Ors. CM(M) 1028/2012 dated 14.09.2012*** to contend that in a suit between landlord and tenant, any party claiming title to the property would not be a necessary or proper party.

8. Learned counsel appearing for respondent No.3 has relied upon ***Renu Vij v. Daljit Singh Bhatia and Anr. 2004 (113) DLT 880*** to contend that respondent No.3 is a necessary and proper party. She has taken me through documents of title to claim that respondent No.3 is the absolute owner and has been receiving rent from respondent No.1.

9. The Supreme Court in ***J.J. Lal Pvt Ltd (Supra)*** held as follows:-

“IAs Nos.33-36 of 2001

26. Hemlata Mohan, the applicant in these IAs seeks her impleadment in these proceedings submitting that on the basis of the will dated 30.1.1935 executed by her grandfather she is one of the landlords entitled to apportionment of rent. A suit for establishment of her title and share in the property is pending in the Madras High Court registered as Civil Suit No.452 of 1988.

IAs Nos. 41 to 44 of 2001

27. These applications are filed by Municipal Corporation of Chennai seeking its impleadment in the proceedings alleging that the two premises, Door Nos.244 and 264, subject-matter of

litigation in these proceedings are owned by it and therefore it needs to be impleaded as party in these appeals.

28. Both the sets of applications raise such controversies as are beyond the scope of these proceedings. This is a simple landlord- tenant suit. The relationship of the Municipal Corporation with the respondents and their mutual rights and obligations are not germane to the present proceedings. Similarly, the question of title between Hemlata Mohan and the respondents cannot be decided in these proceedings. The impleadment of any of the two applicants would change the complexion of litigation and raise such controversies as are beyond the scope of this litigation. The presence of either of the applicants is neither necessary for the decision of the question involved in these proceedings nor is their presence necessary to enable the court effectually and completely to adjudicate upon and settle the questions involved in these proceedings. They are neither necessary nor proper parties. Any decision in these proceedings would govern and bind the parties herein. Each of the two applicants is free to establish its own claims and title, whatever it may be, in any independent proceedings before a competent forum. The applications for impleadment are dismissed.”

10. Similarly, this Court in *Arvinder Kaur Sethi (Supra)* held as follows:-

“...In a suit of this nature, a third person claiming himself to be the owner of the suit premises, cannot be permitted to be impleaded, as that would not only create complication in the determination of the dispute involved between the plaintiff and the defendant, but, would involve determination of issue of title, which is not the subject matter of the suit before the court of Civil Judge. The determination of such a claim by a third person would take primary position, and the actual dispute would be relegated to the secondary one. Whether or not, the petitioner is the owner of the suit premises on the basis of sale deed, is certainly beyond the scope of present suit, filed by the plaintiff

against the defendant. It is not that the applicant/petitioner may not have remedy based on her claim of ownership; but, that is not available in the suit which the plaintiff has filed against the defendant based on the premise of tenancy. Further, another important aspect that is noticed is that the applicant/petitioner had already filed a suit seeking declaration of title of the suit premises, and which is, pending adjudication. It is settled law that a party claiming a right to be impleaded, has no right to litigate its independent claim, unconnected with the suit in dispute.”

11. In view of the above legal position, it is clear that respondent No.3 is neither necessary nor proper party to the present proceedings. The impugned order impleading respondent No.3 suffers from material illegalities and is liable to be quashed.

12. I accordingly, allowed the present petition setting aside the impugned order dated 18.09.2015 by which it allowed the application of respondent No.3 under Order 1 Rule 10 CPC.

JAYANT NATH, J.

FEBRUARY 01, 2017/raj