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

+ CM(M) 1317/2012 & CM No. 20267/2012

VIRENDER KUMAR BHARDWAJ Petitioner

Through: Mr. Vicky Bhardwaj, son of the
petitioner.

versus

KAMLESH & ORS Respondents

Through: Mr. Rajiv Duggal & Mr. Bharat
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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16.03.2018

The petition at hand was filed to bring a challenge to the order dated 07.09.2012 of the Probate Court in case (probate case no. 44/2010) instituted by the petitioner against second, third and fourth respondents, whereby the application of the first respondent seeking impleadment under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC) was allowed. Concededly, the first respondent who has been impleaded as additional respondent to the probate case is not member of the family or in line of succession qua Tilak Raj Bhardwaj, who is stated to have left behind a Will dated 12.06.1990, which is the subject matter of the probate proceedings. The first respondent, instead, claims right, title and interest in the property described as Quarter no. 11, situated at Gur Mandi, Rajupura Chhawani, Delhi on the strength of agreement to Sell executed by Tilak Raj Bhardwaj on 03.06.1987 statedly for consideration. The first respondent, *inter alia*, also claims to have been

put in possession of first floor of the said property, her further claim being that the symbolic possession of the ground floor was also handed over at the time of execution of the said Agreement to Sell dated 03.06.1987.

The pleadings on record and the submissions of the learned counsel on both sides bring out further that there are at least two other cases pending involving the said very property, both instituted by the first respondent; one, seeking relief of specific performance and the other seeking declaration. While the suit for specific performance is pending in the Court of Mr. V.K. Gautam, Additional Senior Civil Judge (Central District) at Tis Hazari, the suit for declaration is stated to be pending in the Court of Mr. Vipin Kharb, Civil Judge, North West at Rohini Courts. In the suit for specific performance, the third and fourth respondents herein are defendants while it is conceded the application of the petitioner herein seeking impleadment under Order 1 Rule 10 CPC was earlier dismissed but a fresh application for similar relief is still pending consideration. In the suit for declaration, besides Sub Registrar, the petitioner is a defendant.

After some hearing, the learned counsel for the first respondent in whose favour the impugned order was passed impleading her in the probate case fairly conceded that it is a dispute essentially between the persons in line of succession qua deceased Tilak Raj Bhardwaj she being a stranger. He submitted that, in this view, he may be permitted to withdraw the application for impleadment under Order 1 Rule 10 CPC thereby setting aside the impugned order but may be permitted to move an appropriate application before the competent Court for bringing the suit for declaration and the probate case before the same Court.

While conceding to the above submissions of the counsel for first respondent, the learned counsel representing the petitioner submitted that in the event of his application under Order 1 Rule 10 CPC for impleadment in the suit for specific performance being allowed by the concerned Court, he may also be granted similar liberty to move thereafter an application for bringing the said suit also before the same Court as is dealing with the probate case.

As far as the prayer for consolidation of any case with the probate case is concerned, the learned counsel on both sides fairly agree that this aspect will have to be left to be considered and adjudicated upon to the concerned Court at appropriate stage.

In above view, the petition is allowed, the impugned order dated 07.09.2012 is set aside, the application under Order 1 Rule 10 CPC of the first respondent on which she was allowed to be impleaded stands dismissed as withdrawn.

Liberty as aforesaid is granted both to the first respondent and to the petitioner herein.

For removal of doubts, it is added that nothing observed passed shall be construed as final expression of opinion on merits on any of the contentions of the parties. The above consent order is passed without prejudice to the contentions of either side.

This disposes of the petition and the pending applications.

Dasti under the signatures of Court Master.

R.K.GAUBA, J

MARCH 16, 2018/nk
CM(M) 1317/2012

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