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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th May, 2018

+ CM(M) 1192/2016 and CM APPL.43307/2016 (stay)

ANITA VERMA & ORS. Petitioners

Through: Mr. Aaditya Vijay Kumar, Adv. with
Ms. Liza M. Baruah, Adv.

versus

KARAN SINGH Respondent

Through: Mr. Naresh K. Daksh, Adv. for
Mr. Ashok Kumar Verma/intervener.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petitioners are the plaintiffs of the civil suit (Case No.386/16) which was instituted against the first respondent (the defendant) seeking reliefs in the nature of partition and separate possession, besides mandatory injunction *qua* property No.9/6021, Tapovan Street, Subhash Mohalla, Raghuvar Pura, Gandhi Nagar, Delhi-110 031. They are aggrieved by the order dated 20.05.2016 of the additional district judge (ADJ) whereby the second respondent has been allowed to be impleaded as a party to the suit on his application under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (CPC).

2. It is not disputed that the property, which is the subject-matter of the proceedings from which the petition arises, was originally

owned by Smt. Ramo Devi, wife of the first respondent Karan Singh. The said original owner died on 26.06.2004. The first petitioner is the wife of the pre-deceased son of said Ramo Devi, second and third petitioners being the sons of the first petitioner, born out of her said wedlock with the son of Ramo Devi. The defendant in the suit, *i.e.* the first respondent is the husband of the deceased Ramo Devi.

3. It appears that first respondent had earlier filed a probate case (PC No.407/06/2005) setting up a Will dated 07.05.2004, statedly left behind as her last Will by Ramo Devi. It also appears that in the said proceedings, the second respondent had set up another Will dated 30.12.1998 in terms of which the title of the said property was to pass on to him after the death of Ramo Devi. It further appears that two other Wills were propounded in the said probate case, they being Will dated 23.08.1996 and 13.04.2004. The additional district Judge, after putting the case to trial, passed the judgment dated 05.04.2010, whereby letters of administration on the basis of Will dated 07.05.2004 was granted, the claim based on the other Wills having been rejected. It is the case of the petitioners in the afore mentioned civil suit that by virtue of Will dated 07.05.2004, they are entitled to 67% of share in the subject property, the defendant of the suit being entitled to the remainder. The judgment of the probate case is presently under challenge in appeal taken out by the second respondent.

4. It is on the basis of aforementioned facts that the second respondent sought impleadment claiming himself to be a necessary

party to the suit. His contention has been accepted by the trial court by the impugned order observing that non-impleadment would cause prejudice to his interest and in his absence no effective decree can be passed.

5. At the hearing, it came out that the second respondent had instituted a civil suit seeking relief of possession *qua* the subject property impleading the petitioners herein and the first respondent as party defendants, his claim in that suit being founded, *inter alia*, on the basis of Will dated 30.12.1998 and other documents in the nature of agreement to sell and general power of attorney, *etc.* Concededly, the plaint in the said suit was rejected by the trial court, the appeal of the second respondent being presently pending before the first appellate court presided over by additional district Judge.

6. It also came out at the hearing that the first respondent had instituted a suit seeking cancellation of the documents on which the second respondent relies besides relief in the nature of permanent injunction, in which suit the second respondent and his wife Veena Verma are party defendants. Admittedly, the petitioners were not shown in the fray as parties to the said suit of the first respondent. He having died, the petitioners have since been substituted in his place by an order passed in January, 2018. The said other suit is pending trial.

7. It may be added here that the second respondent is not related in any manner to the parties to the suit or to Ramo Devi, he being a stranger to the family.

8. In the above facts and circumstances, it cannot be said that the second respondent is either a necessary or a proper party to the suit in which his impleadment has been allowed. It is a suit instituted by the parties claiming under the Will dated 07.05.2004 in which respect probate has been granted, after contest, by a competent court. Though appeal of the second respondent is pending, it is conceded that there is no stay granted against the operation of the judgment of the probate court. The second respondent has already instituted proceedings in his own rights seeking relief to which he claims to be entitled vis-à-vis the subject property. He cannot impose himself on the plaintiffs of the case. His non-impleadment in these proceedings will not cause any prejudice or undue harm to his interest as any judgment passed in this case will obviously not bind him. The reliance on *Vidhi Constructions Pvt. Ltd. vs. Baljit Kaur*, 2001 (91) DLT 730 is misplaced.

9. In above facts and circumstances, the impugned order dated 20.05.2016 is set aside. The application under Order I Rule 10 CPC of the second respondent is dismissed.

10. The petition and the application filed therewith stand disposed of.

R.K.GAUBA, J.

MAY 16, 2018

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