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

Decided on: 10th April, 2018

+ CM(M) 804/2017 and CM 27091/2017

SHRI RAM

..... Petitioner

Through: Ms. Raghubir Singh Rana,
Advocate

versus

NATIONAL CAPITAL TERRITORY OF
DELHI (GOVT OF DELHI) & ORS

..... Respondents

Through: Mr. S.S. Parashar, Adv. for R-6 to
11

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The sixth to eleventh respondents (collectively, the plaintiffs) had instituted civil suit (suit no.445/12) seeking reliefs of declaration and mandatory injunction with damages, impleading the first to fifth respondents (first to fifth defendants before the trial court), the cause of action pleaded and the prayer made therein concerning certain land over which the petitioner has been claiming right of way, this assertion on his part having earlier been the subject matter of dispute before the Financial Commissioner leading to order dated 23.08.2011 in proceedings taken out by him against Consolidation Officer / Tehsildar, Kherakhurd. The petitioner had moved an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC)

seeking impleadment on the ground that the reliefs claimed in the civil suit had a bearing on his claim to right of way. The plaintiffs of the case had also moved an application for *ad interim* injunction under Order XXXIX Rules 1 and 2 CPC against the parties which they had impleaded as the defendants. Both the said applications alongwith one another came up for consideration before the trial court on 19.12.2015. By the order passed on the said date, the additional senior civil judge first allowed the impleadment and thereafter took up the application under Order XXXIX Rules 1 and 2 CPC. He held the petitioner to be a necessary party to the proceedings in the suit and thus directed the plaintiffs of the case to file amended memo of parties. He found no *prima facie* case in the suit and declined to grant any *ad interim* injunction.

2. The order of impleadment under Order 1 Rule 10 CPC was challenged before this court by CM (M) 394/2016 while the order declining *ad interim* injunction was challenged separately by Miscellaneous Civil Appeal (MCA 53/2016) before the court of the Additional District Judge. While in the first matter – CM (M) 394/2016 – the petitioner was impleaded as a party, the said challenge having been repelled, the petition having been dismissed, in the second matter – MCA 53/2016 – the name of the petitioner was omitted from the array. The Additional District Judge by his judgment dated 27.03.2017 found the inquiry held by the trial court for purpose of dealing with the application under Order XXXIX Rules

1 and 2 CPC to be deficient. He, thus, set aside the order dismissing the application and remanded the matter for fresh consideration.

3. The short grievance of the petitioner is that the omission to implead him as a party to the miscellaneous civil appeal was dishonest, it being impermissible for the first appellate court to allow the said appeal behind his back.

4. After some hearing, the counsel for the plaintiffs (respondents no.6 to 11) fairly conceded that the appeal was defective on account of non-joinder. In this view, the impugned order of the first appellate court dated 27.03.2017 is set aside. The miscellaneous civil appeal is revived on the file of the first appellate court. The petitioner shall stand impleaded in those proceedings and will be entitled to participate. The first appellate court is directed to hear the parties afresh and pass a fresh judgment. The parties are directed to appear before the first appellate court on 14.05.2018.

5. The petition and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J.

APRIL 10, 2018

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