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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 11th April, 2018

+ CM (M) 8/2017

RADHA KRISHAN WADHWAPetitioner

Through: Mr. S.C. Singhal, Adv.

versus

KUSUM WADHWA & ANR. Respondents

Through: Mr. Sourabh Malhotra, Adv.

for R-1.

Mr. Anil Kumar Chandel, Adv.

for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the first plaintiff of the civil suit (CS No. 55/2016) which was instituted in January, 2011 on the original side of this Court where it was registered as CS (OS) 185/2011. The suit as presented is directed against the first respondent, the reliefs claimed being decree for possession, injunction – prohibitory and mandatory, damages and mesne profits in respect of ground floor portion of property described as I-30, Lajpat Nagar, III, New Delhi.

2. The petitioner is aggrieved by the order dated 09.11.2016 passed by the Additional District Judge whereby the application of the second respondent for impleadment in the said suit under Order 1 Rule 10 of the Code of Civil Procedure, 1908 was allowed.

3. The second respondent admittedly is widow of Vasdev Wadhwa, late brother of the petitioner, the first respondent also being predecessor-in-interest of the original owner of the subject property under whom the parties claim.

4. The second respondent had filed a suit on 25.02.2016 pending in the court of Civil Judge for the reliefs of mandatory and prohibitory injunction respecting first floor portion of the said very property, she also seeking mesne profits, the petitioner and the other plaintiff being defendants. The suit in which the impugned order was passed is being contested by the first respondent by written statement along with which she has filed counter-claim seeking relief of declaration that the Gift Deed dated 15.09.1999 statedly executed by late Vasdev Wadhwa, on the strength of which the petitioners claim to be the owner of the entire property, is null and void. Noticeably, this precisely is the case set up by the second respondent in her suit, she being the widow of the said Vasudev Wadhwa.

5. It is against the above backdrop that the trial Court has found the prayer for impleadment to be just and proper.

6. The petitioner relies on the judgment of the Supreme Court in *Kanaklata Das & Ors. Vs. Naba Kumar Das & Ors. 2018 (1) RCR 205* to contend that the suit cannot be converted into one wherein the right, title and interest of the second respondent qua the ground floor portion of the property are also to be adjudicated upon, the focus of the case of the petitioners being restricted to the ground floor portion only.

7. The submissions of the petitioners do not appeal to this Court. The controversy with regard to the request for impleadment of the second respondent cannot be viewed from such narrow lense. It may be that the petitioner is resting his case only for purpose of his right, title and interest qua the ground floor portion of the property. But it cannot be ignored that he relies on the Gift Deed statedly executed by the late husband of the second respondent, its validity having been questioned not only by the second respondent but also by the first respondent i.e. the existing defendant. The dispute raised in the counter-claim, particularly, would justify the impleadment inasmuch as the finding returned as to the validity of the Gift Deed would regulate the rights of the parties.

8. In these circumstances, the second respondent is at least a proper party, if not a necessary party.

9. The petition is, thus, devoid of substance and is dismissed.

R.K.GAUBA, J.

APRIL 11, 2018

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