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

Decided on: 17th January, 2018

+ CM(M) 72/2018 and CM 1924-1925/2018

ANITA JAIN

..... Petitioner

Through: Mr. Jayant K. Sud, Sr. Advocate
with Mr. R.N. Dubey, Ms. Vaishali Soni and
Mr. Honey Khanna, Advocates

Versus

ASHOK KUMAR ARORA & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the plaintiff of the civil suit (CS 1200/16) instituted by her, *inter alia*, for recovery of possession of the subject property, admittedly originally owned by Raj Kumar Jain, who has since died. The petitioner claims to be distantly related to the said Mr. Raj Kumar Jain. The suit, as presented, was directed against the first respondent Ashok Kumar Arora who statedly had been inducted as tenant in the subject property by Raj Kumar Jain during his lifetime. The petitioner claims to be the owner of the subject property, after the death of Raj Kumar Jain having inherited the rights under a Will statedly left behind by him.

2. The defendant (first respondent) is resisting the suit declining to hand over the possession of the suit property to the petitioner on the contention that some other parties (i.e. second to seventh respondents)

were also claiming to be the owner of the subject property on the ground that they were the class-II legal heirs, who had inherited the interest.

3. The said other parties i.e. second to seventh respondents, moved an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC) seeking impleadment, *inter alia*, raising the contention that the Will set up by the petitioner is not genuine, it being a fake and fabricated document. The Additional District Judge has allowed the said application under Order I Rule 10 CPC by order dated 12.09.2017, which is assailed by the petition at hand.

4. The petitioner takes exception to such parties being imposed on her in the suit as against whom she did not wish to litigate. She takes exception to the consequent enlargement of the scope of the suit. She also takes exception to certain observations of the learned Additional District Judge which have the effect, as per her submissions, of doubting the genuineness of the Will on the basis of which she lays a claim to the subject property.

5. Without doubt, the Additional District Judge could have avoided any comments on the genuineness of the Will set up by the petitioner. But then, it has to be borne in mind that such observations were made only for purposes of dealing with the prayer under Order I Rule 10 CPC which, being tentative in nature, will not be construed as a final expression of opinion on merits of the contentions of either side.

6. In the above facts and circumstances where the tenant in possession of the subject property is ready to vacate, his predicament

being as to whom to hand over the possession, there being two sets of parties claiming inheritance under the original owners / landlord, the impleadment of the second to seventh respondents as defendants in the suit by the impugned order is correct approach adopted by the trial court. The impleadment of second to seventh respondents will assist in reaching an appropriate decision on the pleas raised. From this perspective, the said set of parties are definitely proper parties to the suit, if not necessary.

7. In the above facts and circumstances, the petition and the applications filed therewith are dismissed. However, in order to be fair to the petitioner as the plaintiff of the suit, she is given liberty to bring in such amendments to the plaint as have become necessary after the impleadment of the additional defendants.

8. To allay the apprehensions of the petitioner, it is clarified that the observations on the merits of the claim of the petitioner, or of the opposite party, in the impugned order of the Additional District Judge, or of this court, shall not be construed as final expression on merits.

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R.K.GAUBA, J.

JANUARY 17, 2018

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