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

\+ **FAO(OS) 83/2019, CM APPL. 19185/2019 (delay) and CM APPL. 19186/2019 (stay)**

SAMEER SINGH ..... Appellant

Through: Mr. Samar Bansal, Mr. Devahuti Pathak and Mr. Sachin Mishra, Advocates.

versus

ARVIND SINGH & ORS ..... Respondents

Through: Mr. Udayan Jain, Mr. Kamal Sharma and Ms. Gunjan Richharia, Advocates for R-1.
Mr. A. Chakraborty, Advocate for R-2.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **05.11.2019**

1. The Appellant has challenged an order dated 21st January, 2019 passed in CS (OS) 12/2019 titled ***Sameer Singh v. Arvind Singh and Others*** to the extent that the learned Single Judge had ordered the deletion of Defendant No.1 Mr. Arvind Singh from the array of Defendants as he was not found either to be necessary or proper party to the suit. The prayer in the present appeal is that Defendant No.1 be restored as a party to the present suit; the suit property be declared to be not exempted from applicability of *lis pendens* and observations as referred to in Ground H of the appeal may be expunged. Notice was issued to the Respondents confined to only deletion

of Defendant No.1 from the array of Defendants as under:

> "So far as the deletion of the Defendant No.1 from the array of Defendants is concerned, having perused the plaint which has been tendered in Court, we are inclined to examine the said aspect and to issue notice in the appeal on the same."

2. In brief, the facts of the case are that the grandfather of the Plaintiff/Appellant namely Marshal Arjan Singh was owner of the suit property being house No.C-170, Defence Colony, New Delhi, which was transferred by him to his father Shri Krishan Singh. Shri Krishan Singh bequeathed the said property to Mrs. Amrita Singh, late mother of the Plaintiff by way of a Will dated 30th August, 1959. Ms. Amrita Singh passed away in 1999 when Plaintiff was only 19 years old and he was made to believe that his grandfather late Marshal Arjan Singh got his mother Ms. Amrita Singh to sign a document in early 1970s which divested her of title of the suit property. Marshal Arjan Singh passed away on 16th September, 2017 and the Plaintiff started asking Defendant No.1 about division of family assets to which evasive replies were given. So, he sent a legal notice dated 18th September, 2018 to Defendant No.1 Arvind Singh and Defendant No.2 seeking complete disclosure of all documents regarding estate left by Marshal Arjan Singh and his wife late Ms. Teji Arjan Singh including the suit property. The Plaintiff/Appellant also made enquiries from relevant authorities which revealed a shocking and clear case of forgery and fraud committed by Defendant No.1 and 2 to create documents by which late Mrs. Amrita Singh divested ownership of the property and a forged gift deed dated 10th June, 1998, duly registered was found by which ownership of the suit property was transferred to Defendant No.2. When confronted, no

specific answer was given by Defendant No.1 and soon thereafter the suit property was sold to Defendant/Respondent No.4 SBW Udyog Ltd. The Appellant/Plaintiff had alleged collusion and conspiracy between Defendant No.1 and 2 in forging the gift deed and other public documents and as per him, there was sufficient foundation in the plaint for issuance of notice against Defendant No.1. The suit was taken up on 21st January, 2019 and on that day Defendant No.1, 2 and 3 were present on caveat. The notice was issued only to Defendant No.2 to 4 and Defendant No. 1 Arvind Singh was ordered to be deleted from the array of the parties and it was also held that suit property was exempted from applicability of *lis pendens* under Section 52 of Transfer of Property Act on an incorrect application of the dictum of ***Vinod Seth v. Devinder Bajaj*** and certain pre-mature observations were made regarding contents of the plaint being far-fetched, which would prejudice final adjudication of the suit. Hence, the present appeal has been filed. As noted earlier, a limited notice was issued confined to challenge to deletion of Defendant No.2 from array of defendants.

3. The Respondents no. 1 & 2 have filed a detailed reply denying the averments made in the appeal. They have also placed on record a copy of the plaint filed by the present Appellant before learned Single Judge. A copy of the Deed of Testament executed by Ms. Amrita Singh on 20th January, 1999 has been placed on record as Annexure R2 which apparently does not mention the suit property as one of the properties bequeathed by the said Deeds of Testament. Annexure R3 is an order dated 22nd May, 2019 passed in a Criminal Complaint titled ***Sameer Singh v. Arvind Singh***. In the said order, the learned Judge has decided as to whether there were sufficient

grounds for proceeding against the Respondents or not on the complaint of the present Appellant regarding the same cause of action. The learned Judge after detailed discussion has come to the following conclusion:

> "17. In view of the above discussion, it cannot be deduced from the evidence led by the complainant that Respondents have committed the forgery with regard to the signature of late Ms. Amrita Singh on gift deed dated 10.06.1998. The allegations made by the complainant are based upon his own surmises and conjecture. There is no substantial evidence led by the complainant to show prima facie that any such forgery has been committed. Thus, the allegations of cheating based upon the forgery of the said agreements cannot sustain also. The complaint failed to substantiate his allegations against the Respondents. Clearly in the instant case, no offence U/s 403/419/420/465/466/467/468/471/34 and 120-B IPC, is made out. Hence, the complaint stands dismissed."

4. It was found that there was no subsequent evidence on record to show even prima facie whether any forgery has been committed.

5. We have heard the learned counsel appearing for both the parties and we have gone through the copy of the plaint minutely. It is noticed that except for alleging here and there that Defendant No.1 was not giving straight replies to the queries of the Plaintiff; Defendant No.1 denied having any legal obligations to help Defendant No.3, who happens to be a real sister of the Plaintiff/Appellant; Defendant No.1 did not respond to an e-mail sent by the Plaintiff; the reply of the Defendant No.1 to the legal notice of Plaintiff/Appellant was verbatim the same as of Defendant No.2; Defendant Nos.1 and 2 along with other known and unknown persons had created forged documents. Defendant No.1 was in conspiracy with Defendant No.2

and some unknown persons; Defendant Nos.1 and 2 had played fraud upon the Plaintiff and his late mother and they have sold off the property in question to defeat the rights of the Plaintiff, there is no specific allegation against Defendant No.1. Admittedly, the alleged gift deed is in favour of Defendant No.2. Defendant No.3 is a proforma party and Defendant No.4 is the buyer of the suit property from Defendant No.2. No relief has been claimed against Defendant No.1. No specific act has been attributed to Defendant No.1 and he is sought to be impleaded by merely making vague allegations against him. In view of this Court, he does not become either a necessary or a proforma party on the strength of these vague allegations. Defendant No.1 had not been shown to be having any right, title or interest in the suit property at any point of time. Moreover, it is not alleged that the proceeds of the sale of the said property have come to the bank account of Defendant No.1. Order I, Rule 3 of The Code of Civil Procedure provides as to who may be joined as Defendants and the same is reproduced here under:

> "**3. Who may be joined as defendants.** All persons may be joined in one suit as defendants where-
>
> (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and
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> (b) if separate suits were brought against such persons, any common question of law or fact would arise."

6. It is to be noticed that there has to be any right to relief as a pre-condition for joining of Defendants whether they are responsible jointly or severally or in the alternative but no such occasion has arisen in the present suit and the

learned Single Judge was right in ordering deletion of Defendant No.1 from the array of Defendants.

7. Another objection raised by the learned counsel for the Appellant/Plaintiff is that right at the initial stage of the suit, the learned Single Judge ought not have ordered for deletion of Defendant No.1. The said power of the Court comes from Order I, Rule 10(2) of the Code of Civil Procedure and the same is reproduced here under:

> "(2) **Court may strike out or add parties.** – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

8. It is clear that the Court may exercise the power to strike out or add parties at any stage of the proceedings and even no application is required for the same as this power can be exercised either upon or without the application of the either party and the Court can order that the name of any party improperly joined be struck out.

9. Learned counsel for the Appellant has placed reliance on judgment of the Hon'ble Supreme Court in the matter of ***Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I And Another (2004) 9 SCC 512*** and the judgment of this Court in ***Bright Enterprises Private Ltd & Anr. v. MJ***

Bizcraft LLP & Anr. RFA(OS)(COMM) 8/2016 decided on 4th January, 2017. The reliance on both these judgments is misplaced as the question in dispute in ***Liverpool & London S.P. & I*** *(supra)* was not connected to the dispute in hand. On the other hand, the judgment in the matter of ***Bright Enterprises Private Ltd.*** (supra) deals with the situation where the suit filed by the Appellant/Plaintiff was dismissed at the threshold. In the present case, the suit of the Appellant/Plaintiff was entertained by the learned Single Judge and only deletion of an unnecessary party, i.e. Defendant No.1 was ordered.

10. There is no merit in the appeal and the same is hereby dismissed. It is made clear that whatever is stated above would not affect the final disposal of the suit on merits at the relevant time. The pending applications are also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 05, 2019
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