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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM (M) 1057/2018 & CM APPLs. 36471/2018 & 38346/2019**

BALDEV SINGH

..... Petitioner

Through: Mr. Ratnesh Bansal and Mr. Ashu
Singh, Advocates. (M:9971401959)

versus

MEER SINGH & ORS.

..... Respondents

Through: Mr. Rajiv K. Garg, Mr. L. S. Rana,
Mr. Ashish Garg, Mr. Arjun Singh
Mr. Govind Singh and Mr. Hari
Bhuvan, Advocates for R-1(a), (d),
(e). (M:9810002830)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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03.02.2020

1. The present petition arises out of the impugned order dated 21st August, 2018, by which the application for impleadment of Mr. Baldev Singh was rejected by the Trial Court.
2. The background is that a suit for specific performance was filed by Respondent No.1/Plaintiff - Mr. Meer Singh (*hereinafter*, “*Plaintiff*”) against Respondent No.2/Defendant No.1 - Mr. Amar Singh (*hereinafter*, “*Defendant No.1*”), seeking specific performance of the agreement to sell dated 26th November, 2005. In the said suit, vide order dated 28th November, 2011, passed by the Id. Division Bench, Respondent Nos. 3 and 4/Defendant Nos.2 & 3 i.e., Mr. Naresh Kumar and Ms. Raj Rani were directed to be impleaded and a limited written statement was directed to be filed. The Plaintiff’s evidence has already been concluded and the Defendants’

evidence has now been directed to be concluded on or before 30th April, 2020, vide order dated 28th January, 2020 passed in CM (M) 701/2018, arising out of the same suit.

3. In the present petition, the question of impleadment of Mr. Baldev Singh, who has filed an application under Order I Rule 10 CPC, is under consideration. The case of Mr. Baldev Singh is that he purchased 2 bighas and 8 biswas of land falling in Khasra No.247/2, situated in the revenue estate of Village Garhi Randhala, Delhi-110091 from Defendant No.1 for a total sale consideration of Rs.2,15,000 vide the agreement to sell dated 10th October, 2001. He further claims that he is in possession of the land and has been cultivating the same since purchase. His case is that sometime in 2018, when he went to obtain a no objection from the SDM's office, he came to know about the pendency of the present suit. Accordingly, he seeks impleadment by means of an application under Order I Rule 10 CPC.

4. The application has been rejected by the Trial Court vide the impugned order dated 21st August, 2018. In the impugned order, the Court has come to the conclusion that the applicant is not a necessary party for adjudication of the matter and in any event, the remedy of the applicant would be against Defendant No.1 alone.

5. Mr. Bansal, ld. counsel appearing for the Petitioner, submits that the applicant is in possession of the property and his interest would be severely hampered if the impleadment is not allowed. The applicant, being in possession of the property, would be a necessary and proper party, inasmuch as any order which may be passed in the suit would have a direct impact on his interests. It is further submitted that since no notice was ever issued to the applicant, who is in possession since 2001, the applicant did not file any

application for impleadment.

6. On the other hand, Mr. Garg, ld. counsel appearing for the Respondents, disputes the Petitioner's submission that he has been in possession of the property. It is further submitted that the applicant could only have availed the remedy of specific performance within three years from the alleged agreement to sell dated 10th October, 2001. No prayer or relief of specific performance has been sought by the applicant against Defendant No.1 till date. Further, the counsel who is now representing the applicant, is the same counsel who represents Defendant Nos.2 & 3 in the suit. Thus, the applicant had knowledge of the pendency of the suit.

7. This Court has perused the application under Order I Rule 10 CPC, the alleged GPA, agreement to sell and other documents. Admittedly, the agreement to sell as well as the GPA are un-registered. Ld. counsel for the applicant submits that during the said period, almost all the property transactions were entered into by way of a GPA, agreement to sell, affidavit, possession letter etc. Thus, the sale documents in favour of the applicant are valid.

8. This contention is under severe cloud, inasmuch as in the agreement to sell relied upon by the applicant, physical possession has been handed over to the applicant. In such a case, the agreement to sell, requires registration as per law. In any event, the applicant has clearly not sought any relief for the last 17 years in respect of the said agreement to sell dated 10th October, 2001. In any event, the applicant may have remedies against Defendant No.1, which would not be the subject matter of this petition or suit.

9. At present, the suit is at the stage of Defendants' evidence, which has

been directed to be concluded on or before 30th April, 2020. At this stage, if the applicant is impleaded, it would completely protract the adjudication of the suit. Moreover, it cannot be said that the suit was not within the knowledge of the applicant as, admittedly, the applicant and Defendant Nos.2 & 3 have the same counsel and Defendant no.1 with whom the Applicant is stated to have entered into an agreement to sell always had knowledge of the suit. Thus, there is no error in the impugned order dated 21st August, 2018. The suit shall proceed to trial. Remedies of the applicant, if any, are left open.

10. Ld. counsel for the Petitioner submits that the applicant did not have knowledge of the pendency of the suit and the fact that he has approached the counsel for Defendant Nos.2 & 3, should not disadvantage him. It is clarified, that the contention in respect of common counsel is only being recorded for proper narration of facts and nothing more. The observations in this order would not affect the adjudication of any proceedings which the Applicant may avail of, in accordance with law as the merits of the Applicant's claims against Defendant no.1 have not been examined by this Court.

11. The petition and all pending applications are disposed of in the above terms. *Dasti*.

PRATHIBA M. SINGH, J.

FEBRUARY 03, 2020/dk