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

Date of decision: 11.12.2023

+ CM(M) 750/2022 & CM APPL. 33452/2022

SMT. VEENA NAGAR

..... Petitioner

Through: Mr. Vishnu Sharma, Advocate

versus

KIRESHWATI & ORS.

..... Respondent

Through: Mr. Yogesh Sharma and Mr. Yugant
Parihar, Advocates for Respondent
No.1

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 09.12.2021 passed by the Additional District Judge- 01, Shahdara, Karkardooma Courts, Delhi in CS 1115/18 titled as **Kireshwati v. Sanjay Kumar & Ors.** ('Trial Court') whereby the application of the Petitioner filed under Order 1 Rule 10 read with Section 151 of the Civil Procedure Code, 1908 ('CPC') seeking impleadment in the civil suit was dismissed by the Trial Court.

1.1. The Respondent No.1 is the original plaintiff and Respondent Nos. 2 to 8 are the original defendants in the civil suit.

1.2. The Petitioner is an Applicant who has filed an application under



Order 1 Rule 10 of CPC before the Trial Court seeking her impleadment as a defendant in the aforesaid civil suit.

1.3. The civil suit has been filed by Respondent No.1 seeking a decree of possession of House No.9/5058, Shanti Mohalla, Old Seelampur, Delhi 110031 ('suit property'), rendition of account of rent for the month of August 2018 to December 2018 and permanent injunction restraining Respondent Nos. 2 to 8 to not pay the rent of the suit property to any third party.

1.4. Respondent No.1 has filed the aforesaid civil suit claiming herself as the owner and landlord of the suit property against Respondent Nos. 2 to 8, who are the tenants on the ground floor (G.F) of the said suit property. Respondent No.1 further has relied upon the registered sale deed dated 09.07.2018 executed in her favour by Mrs. Lakhmiri Devi to prove her claim of ownership.

Arguments of the Petitioner i.e., third party

2. Learned counsel for the Petitioner states that the Petitioner herein is the daughter-in-law of Mrs. Lakhmiri Devi. He states that the Petitioner herein is the owner of the suit property though he fairly admits that no documents evidencing the said claim of ownership have been placed on record either before the Trial Court or with this petition.

2.1. He states that the tenants i.e., Respondent Nos. 2 to 8 who reside in the suit property remit payments of rent to the Petitioner herein. He states that the relationship of landlord and tenant exists between the Petitioner and Respondent Nos. 2 to 8 herein, therefore, the Petitioner herein is a necessary and a proper party to be impleaded in the proceedings of the aforesaid civil suit.



2.2. He, further, states that during the pendency of this petition, the tenants i.e., Respondent Nos. 2 to 8 have vacated the suit property and handed over the possession of the same to the Petitioner herein. He, therefore, states on this ground as well the Petitioner becomes a necessary and a proper party for impleadment.

Arguments of the Respondent No.1 i.e., the plaintiff

3. Learned counsel for Respondent No.1 states that the Petitioner herein became the owner of the suit property by a registered sale deed dated 09.07.2018 executed by Mrs. Lakhmiri Devi in his favour at the office of Sub-Registrar IV-B Vivek Vihar. He states that in fact, the Petitioner herein has signed the said sale deed as an attesting witness and had duly appeared before the Sub Registrar. He states that therefore, Petitioner has due notice of the sale in favour of Respondent No.1.

3.1. He states that the Petitioner who was residing on the second-floor (2nd) of the suit property had undertaken to peacefully vacate the suit property. He states that, however, thereafter, the Petitioner wrongfully started disputing the sale deed dated 09.07.2018 signed by her mother-in-law i.e. Mrs. Lakhmiri Devi in favour of the Respondent No.1.

3.2. He states that Petitioner had filed a suit bearing no. 824/2019 against the Respondent No.1 herein seeking cancellation of the sale deed dated 09.07.2018, declaration declaring documents made in favour of Respondent No. 1 null and void, permanent and mandatory injunction restraining the Respondent No.1 from dispossessing the Petitioner or creating third party interest in the said suit property. He states that the said suit (824/2019) stands dismissed.

3.3. He states that in fact Respondent No.1 herein was constrained to file a



civil suit bearing no. 761/2018 against Mrs. Lakhmiri Devi and the Petitioner as well. He states that pertinently Mrs. Lakhmiri Devi filed her written statement in the said suit (761/2018) and admitted having executed sale deed in favour of Respondent No.1 herein.

3.4. He states that Respondent Nos. 2 to 8 had attorned to the Respondent No.2 and relied upon the notice of attornment of tenancy dated 24.08.2018 issued by Mrs. Lakhmiri Devi to the tenants in this regard. He states that prior to the execution of the sale deed dated 09.07.2018, Respondent Nos. 2 to 8 were admittedly the tenants of the previous owner of the suit property i.e. Mrs. Lakhmiri Devi. He states that they used to make payments through digital mode and/or through cash for payment of rent to Mrs. Lakhmiri Devi.

3.5. He states that the Trial Court vide order dated 18.01.2022 passed an order under Order 39 Rule 1 and 2 of CPC directing the Respondent Nos. 2 to 8 to deposit the rent in the Trial Court, however, the said Respondent Nos. 2 to 8 in violation of the said orders have allegedly made payments to the Petitioner herein.

3.6. He states that the Respondent No.1 being the dominus litis is entitled to decide the parties and opposes the application filed by the Petitioner seeking impleadment in the aforesaid civil suit.

Analysis and findings

4. This Court has considered the submissions of the counsel for the parties and perused the record.

5. The Trial Court by the impugned order while dismissing the application of the Petitioner herein has returned the following operative finding:



“In view of submissions as well as counter submissions on behalf of the parties as well as upon perusal of record, it is clear that the applicant apart from bald assertions, have placed nothing substantial on record in support of her claim. Only copies of some rent receipts purportedly signed by the defendants/tenants has been filed along with the present application u/o 1 R 10 CPC. Perusal of the said rent receipts do not reveal by any stretch of imagination that applicant has any right, title or interest in the suit property. It has been contended on behalf of applicant that hardship shall be caused if she is not impleaded as a party in the present suit. However, the said contention is without any basis as it is worthwhile to mention that the applicant has filed a suit seeking declaration and mandatory injunction with respect to the aforesaid sale deed qua the suit property, which is also pending before this court, thus there is no likelihood of any prejudice being caused to the applicant apropos the suit property. Even otherwise, applicant has not been able to indicate that she is either a necessary party or a proper party to the present suit. Moreover, plaintiff being the dominus litis, cannot be compelled to contest the suit against the proposed party and therefore has a choice to implead those persons as defendants against whom she wishes to proceed in the light of Order 1 Rule 3 CPC. Thus, in the light of above discussion, this court is of the opinion that no ground is made out for allowing the present application. Accordingly, the same stands dismissed being without merits.”

(Emphasis supplied)

6. The Trial Court in its order specifically observed that the Petitioner had failed to substantiate her claim of ownership before the Trial Court and this was one of the significant reasons for the said Court not finding any merit in the submissions of the Petitioner and thereby dismissing her application for impleadment as well.

7. Even before this Court, the Petitioner has not placed on record any documents to support her contention that she is the alleged owner of the suit property. On the contrary, as per the records, the Respondent No.1 has asserted ownership by relying upon the registered sale deed dated 09.07.2018 executed in her favour by the mother-in-law of the Petitioner i.e., Mrs. Lakhmira Devi, moreover, to which the Petitioner is an attesting



witness.

8. In the opinion of this Court, this fact is material and cannot be disregarded as sought to be alleged by the Petitioner herein. No material has been placed before this Court which *prima facie* evidences that the Petitioner herein has semblance to the title in the suit property.

9. It is further pertinent to mention that Petitioner has alleged that the Respondent Nos. 2 to 8 are tenants which have been inducted by her, however, no rent receipts to prove the said contention as well have been placed on record.

10. In these circumstances, this Court finds no merit in the contention of the Petitioner that she is either a necessary or a proper party in the suit. Moreover, considering the fact that the Respondent No.1 is the dominus litis in the aforesaid civil suit, therefore, if Respondent No.1 has elected to proceed in the matter without impleading the Petitioner at his own risk, he is entitled to do so. The Petitioner i.e., the applicant as such cannot be impleaded against the wishes of the Respondent no.1 i.e., plaintiff and neither can be forced to add parties against whom, he does not wish to fight unless it is a compulsion of the rule of law.

11. In this regard, it would be appropriate to refer to the case of ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd. & Ors., (2010) 7 SCC 417*** whereby the Supreme Court has stated that the general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. The impleadment of a party can be on the basis that it is a necessary or a proper party to the proceedings. A necessary party is one



against whom the plaintiff seeks relief or in whose absence an effective decree cannot be passed. A proper party is one against whom relief may not be sought but whose presence is essential for the determination of the questions involved in the suit.

12. The Respondent Nos. 2 to 8 during the pendency of this suit have parted with possession in favour of Petitioner and thus, the provisions of Section 52 of Transfer of Property Act, 1882 ('Act of 1882') are attracted. The Petitioner cannot overcome the bar of Section 52 of the Act of 1882 by seeking her impleadment.

13. For the aforesaid reasons, this petition is completely devoid of merit and is accordingly dismissed. Pending applications, if any, stand disposed of.

14. Interim order dated 11.08.2022 stands vacated.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 11, 2023/msh/ms

[Click here to check corrigendum, if any](#)