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

Date of decision: 10.10.2023

+ CM(M) 1324/2023 & CM APPL. 42632/2023

ASHOK KUMAR SHARMA Petitioner

Through: Mr. Rajiv K. Garg, Mr. Ashish Garg
and Mr. Govind Singh, Advocates

versus

SMT USHA KUSH & ANR. Respondents

Through: Mr. R. M. Sinha, Mr. P.M. Sinha and
Ms. Nandini Harsh, Advocates

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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. This petition filed under Article 227 of Constitution of India impugns the order dated 12.07.2023 passed by the Civil Judge-02, Shahdara District, Karkardooma Courts, Delhi ('Trial Court') in civil suit no. 1469/2019, titled as '**Usha Kush v. Shiv Dutt**', whereby the Trial Court dismissed the application filed by the Petitioner herein under order I Rule 10(2) of Code of Civil Procedure, 1908 ('CPC') seeking impleadment.

1.1. The Petitioner is a stranger to the suit. The Respondent No. 1 is the plaintiff and the Respondent No. 2 is the defendant in the civil suit.

1.2. The civil suit has been filed by Respondent No. 1 against Respondent



No. 2, a tenant, for seeking a decree for possession, arrears of rent, permanent injunction and mesne profits with respect to property no. B-101/2, Village Uldhanpur, Kanti Nagar Extn., Delhi ('suit property').

2. Learned counsel for the Petitioner states that Respondent No. 1 i.e., the plaintiff, has instituted the civil suit by claiming ownership. He states that Respondent No. 1 is relying upon the registered gift deed dated 16.03.2012 executed by the Petitioner herein in favour of the father of Respondent No. 1, who in turn has executed a registered Will dated 28.04.2014 in her favour.

2.1. He states that a substantial suit was filed by the Petitioner seeking cancellation of the said gift deed on 08.03.2016 and though, the suit stands dismissed by the concerned Court on 09.09.2019, the Petitioner herein has filed a first appeal challenging the said dismissal and the same is pending consideration before this Court in RFA No. 1086/2019.

2.2. He states that the Respondent No. 2 was inducted as tenant by the Petitioner herein in the subject property and the said tenant had been remitting the rent to the Petitioner.

2.3. He states that prior to instituting the suit for eviction, the Respondent No. 1 had issued a legal notice dated 11.07.2018 to both the Petitioner herein and Respondent No. 2 calling upon them to render accounts with respect to payment of rent until 11.07.2018.

2.4. He states that despite having issued a notice to the Petitioner, the Respondent No. 1 without impleading the Petitioner filed the civil suit on 29.11.2019 for recovery of arrears of rent and possession only against Respondent No. 2.

2.5. He states that Petitioner herein was not aware about the pendency of



the present proceedings; and in the month of May, 2022, during the pendency of the said suit, Respondent No. 2 has vacated the suit property and handed over the possession of the suit property to the Petitioner herein. Further, in fact, the Petitioner has proceeded to induct a new tenant in the premises at the rent of Rs. 4,000/- per month. He states that in May, 2022, the Petitioner herein learn about the pendency of the suit.

2.6. He states that though the civil suit filed by the Petitioner seeking declaration of cancellation of gift deed dated 16.03.2012 and permanent injunction was dismissed vide order dated 09.09.2019, he is still a necessary and a proper party in these proceedings in view of the pendency of the RFA No. 1086/2019 before this Court, as a decree for possession, if granted, would affect the right of the Petitioner herein. He states that the Respondent No.2 having vacated the suit property, the proceedings are likely to proceed ex-parte.

3. In reply, learned counsel for the Respondent states that the Respondent No. 1 instituted the civil suit on 29.11.2019 i.e., only after a Court of competent jurisdiction had dismissed the civil suit filed by the Petitioner herein challenging the gift deed dated 16.03.2012.

3.1. He states that with the said suit having been dismissed, there is no obligation in law or in fact on the Respondent No. 1 to implead Petitioner herein in the civil suit.

3.2. He states that in the civil suit filed by the Respondent No. 1 herein, the relief of decree of possession and the arrears of rent is only sought against Respondent No. 2 and there is no relief which has been sought against the Petitioner.

3.3. He states that the Respondent No. 1 is a dominus litis and Petitioner is



neither a necessary nor a proper party in the suit.

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

5. There is no dispute that Respondent No. 2 was occupying the portion of the suit property, which was gifted to Shri Bhagwat Parsad Sharma i.e., father of Respondent No.1, by virtue of the gift deed dated 16.03.2012. The Petitioner herein is the daughter of late Shri Bhagwat Parsad Sharma and also the beneficiary under the registered Will dated 28.04.2014 executed by her father.

6. The Petitioner herein having lost in the civil suit seeking cancellation of the gift deed, the devolution of title of suit property by operation of law in favour of Respondent No. 1 stands complete and there is no eclipse on her rights, title or interest.

7. In these circumstances, the institution of the suit civil on 29.11.2019 by Respondent No. 1 for recovery of possession from Respondent No. 2 was well within her legal rights.

8. The non-impleadment of Petitioner in pursuance to the legal notice dated 11.07.2018 is of no consequence as in the said legal notice, the Respondent No. 1 had merely sought rendition of accounts from Respondent No. 2 for the past rental collected until 11.07.2018, which is not a subject matter of the civil suit.

9. This Court also finds the plea that the Petitioner herein was unaware about the pendency of the suit till May, 2022, farfetched. In fact, it is apparent that the Petitioner herein has taken over the possession of the suit property from Respondent No. 2 despite having full notice of the pendency of the proceedings and has therefore, tried to over reach the said suit. An



honest litigant would have taken over the possession after seeking permission from the Trial Court. However, Petitioner and Respondent No.2 have wrongfully surrendered and accepted possession during the pendency of the suit. The Respondent No.2 and the Petitioner shall both remained bound by the outcome of the decree passed in the suit for possession, arrears of rent, damages and injunction, filed by the Respondent No.1 in view of Section 52 of Transfer of Property Act, 1882.

10. The finding of the Trial Court that Petitioner is seeking to convert a suit for possession into suit for title, is correct in the facts of this case as the issue of the title of the Petitioner was not a question arising for consideration in this suit. The Respondent No.1's title to the suit property stands crystallised in view of the gift deed dated 16.03.2012, registered Will dated 28.04.2014 and the decree dated 09.09.2019 dismissing the suit filed by the Petitioner seeking declaration and possession.

11. Lastly, the Respondent No. 1 is a dominus litis and if the Respondent No. 1 does not wish to implead the Petitioner as a party in the suit, this Court is of the view that the Petitioner is neither a necessary or a proper party. In this regard, it would be instructive to refer to the division Bench of this Court in ***Kranti Arora v. Digjam Ltd. & O.P. Khaitan (HUF), 2022 SCC OnLine Del 2023***, wherein the Court has held as under:

“18. Dominus litis is the person to whom a suit belongs and is master of a suit and is having real interest in the decision of a case. The plaintiff being dominus litis cannot be compelled to fight against a person against whom he does not claim any relief. The plaintiff in a suit is required to identify the parties against whom he wants to implead as defendants and cannot be compelled to face litigation with the persons against whom he has no grievance. A third party is entitled to be impleaded as necessary party if that party is likely to suffer any legal injury due to outcome of the suit. The doctrine of dominus litis should not be over stretched in impleading the parties. The court can order a person



to be impleaded as necessary party if his presence is required to decide real matter in dispute effectively. Merely because the, plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. The provisions of Order I Rule 10(2) CPC are having wide amplitude in operation. The Supreme Court in various decisions had interpreted scope and ambit of legal provisions as contained in Order I Rule 10(2) CPC. The Supreme Court in Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay, (1992) 2 SCC 524 interpreted legal provision as contained in Order I Rule 10(2) CPC and held as under:

...”

(Emphasis Supplied)

12. Accordingly, the present petition is without any merit and the same is dismissed.

MANMEET PRITAM SINGH ARORA, J
OCTOBER 10, 2023/rhc/aa

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