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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 19.10.2023*+ **CM(M) 1656/2023 & CM APPL. 52720/2023**
CHANDEEP SINGH S AWHNEY

..... Petitioner

Through: Mr.A.K. Singhla, Sr. Adv. with
Mr.Parmod K. Sharma &
Mr.Prashant Bajaj, Advs.

versus

RAVINDER KUMAR AHUJA & ORS.

..... Respondents

Through: Mr.Abhishek Singh, Mr.Elvin
Joshy, Mr.Vikram Singh Dalal,
Mr.Shashwat Tyagi, Ms.Renu
Sharma, Mr.J. Amal Anand,
Ms.Alisha Sharma, Mr.S.K.
Rout, Mr.Ganesh Singh,
Mr.Aman Mehrotra &
Mr.Rahul Kumar Advs. for R-1
with R-1 present in person.
Mr.Ravinder Kumar, Adv. for
R-2, R-3, R-5, R-6, R-7 & R-8
along with R-8 in present in
person.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed challenging the order dated
30.05.2023 (hereinafter referred to as the 'Impugned Award')



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passed by the learned Additional District Judge-01, South District, Saket Courts, New Delhi (hereinafter referred to as the 'Trial Court') in CS DJ no. 8445/2016 titled ***Ravinder Kumar Ahuja v. Mst. Sahida & Ors.***, (hereinafter referred to as the 'Subject Suit'), dismissing the application filed by one M/s Shabnam, which was claimed to be a partnership firm of the petitioner herein and one Sh. Balraj Singh Sandhu @ B.S. Sandhu, seeking impleadment in the above-mentioned suit.

2. The subject suit has been filed by the respondent no.1 *inter alia* claiming that respondent no.1 is the owner in possession of a property known as No.4, Ahuja Farms, Mulbery Avenue, DLF, Chattarpur Farms (earlier known as house No. 128, M.A., DLF Chattarpur Farms), New Delhi-110074 (hereinafter referred to as the 'Subject Land'). Respondent no.1 further claims that in the year 1980, respondent no.1 had engaged one Sh. Rafiq Ahmed as a chowkidar-cum-caretaker to look after and manage the day-to-day affairs of the respondent no.1 at the subject land. The respondent no.1 further claims that Sh. Raifq Ahmed died on 28.02.2016, leaving behind his widow and children, who are impleaded as defendants in the suit. The respondent no.1 further claims that as the defendants in the suit did not vacate the subject land in spite of notice issued by the respondent no.1, the suit was filed by the respondent no.1 praying for the following relief:-

“i) Decree of mandatory injunction be passed in favour of the plaintiff and against



the defendants, directing them to remove their belongings lying in the premises and to vacate the same as shown Red in the site plan annexed with this plaint, the details of the promises mentioned in para 8 of the plaint.

ii) Decree of prohibitory injunction directing the defendants, their agents, servants and representatives not to damage in any manner, not to destroy, cut or in any manner remove the crops, vegetables, fruits, plants and trees and also not to alienate the whole or any part of the property of the plaintiff without his specific permission and also not to misuse the said premises by holding any functions, unlawful assembly or doing any other illegal acts on any part of the said premises.

iii) Decree for a sum of Rs.3.33.334/- as detailed in para 24 above, on account of damages, mesne profits, compensation, usage charges for holding and using the said premises unauthorisedly and illegally without the permission of the plaintiff w.e.f. 20.05.2016 to 10.07.2016 with interest @ 18% p.a. from the date of institution of the suit till recovery of the said amount.

iv) Decree @ Rs.2,00,000/- p.m. for damages, mesne profits, compensation and usage charges of the property of plaintiff by the defendants w.e.f. 11.07.2016, during the pendency of the suit and till actual vacation by the defendants.

v) Cost of the suit may also granted in favour of the plaintiff and against the defendants.”

3. The subject suit was filed by the plaintiff in the year 2016 and is stated to be presently at the stage of recording of evidence of the defendants in the suit.

4. During the pendency of the above Suit, the above application came to be filed on 25.07.2022 by a partnership firm named M/s Shabnam seeking impleadment in the said suit.



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5. In the said application, it was asserted that respondent no.1 is falsely claiming himself to be the owner in possession of the subject land. The applicant claimed its title to the subject land through one Sh.Surinder Singh Ahuja, who, they claim, was the erstwhile owner of the land and from whom they had purchased the said property vide registered Sale Deeds dated 04.02.1987 and 24.02.1987 in the name of its partners Sh.Jagjit Singh Sawhney and Sh.Balraj Singh Sandhu. It was further claimed that since 03.08.1978, Sh. Rafiq Ahmed and his family had been living in the subject land as tenants. It was claimed that it was only in May 2022 that the applicant came to know about the filing of the subject suit by respondent no.1.

6. The above application has been dismissed by the learned Trial Court vide its Impugned Order observing that the question of title to the subject land does not arise in the subject suit filed by respondent no.1. It was further observed that the Suit is at the final stage and has been pending since 2016, and, therefore, the presence of the applicant is neither necessary nor proper to the adjudication of the subject Suit. The applicant was given the liberty to institute a separate Suit claiming title and possession if it so deems necessary and proper.

7. The learned senior counsel for the petitioner submits that the Impugned Order is liable to be set aside inasmuch as the presence of the applicant is necessary and proper to the suit and its cause of action. He submits that the respondent no.1 is falsely claiming himself to be the owner of the subject land. In



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support, he places reliance on a reply received from the Department of Delhi Archives, Government of National Capital Territory of Delhi, under the Right to Information Act, 2005, which *inter alia* states that the record of the title documents of the respondent no.1 are not available in the said office. He submits that, therefore, there is a serious dispute on the claim of ownership of the subject land by the respondent no.1, and for the proper and complete adjudication of the subject suit filed by respondent no.1, it is necessary and proper for the applicant to be impleaded in the said suit.

8. On the other hand, the learned counsel for respondent no.1 submits that the application has been filed merely by a land grabber, whose intent is to delay the adjudication of the subject suit in connivance with the defendants in the said Suit. He submits that though the application seeking impleadment was filed in the name of a partnership firm, the present application is being filed in the name of an individual who had earlier claimed himself to be holding 80% share in the said partnership firm. He submits that even otherwise, the partnership firm had earlier filed a suit before this Court, being CS (OS) 182/2018, praying for an injunction against the defendants in the subject suit filed by respondent no.1, restraining them from selling, alienating, or parting with the possession of the subject land. In the said suit, by an order dated 24.04.2018, a statement of the applicant was recorded to the effect that the applicant shall be filing a suit for claiming possession of the subject land from the defendants in



the subject suit filed by respondent no.1 within two weeks of 08.05.2018. He submits that to this date, no such suit has been filed. On the other hand, the said suit was also withdrawn by the petitioner, as is recorded in the order dated 19.11.2018. He submits that the petitioner has now filed a separate suit claiming declaration against the title documents of the respondent no.1 before this Court, being CS (OS) 661/2023. He submits that, therefore, the applicant is neither a necessary nor a proper party to the subject suit and the impleadment of the said party would only prejudice and delay the trial of the suit.

9. I have considered the submissions made by the learned counsels for the parties.

10. The Supreme Court in ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.***, (2010) 7 SCC 417, has held that:

“13. 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. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

“10. (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.”

14. *The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.*

15. *A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after*



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the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

(Emphasis Supplied)

11. As noted hereinabove, the subject suit filed by respondent no.1 is one for mandatory injunction. In the said suit, the defence of the defendants would have to be tried. As far as the claim of the applicant, which is now being claimed stating that the petitioner has become the sole owner of the subject land, is concerned, the petitioner has already filed an independent suit challenging the title of the respondent no.1 to the subject land. He can claim his relief in the said suit. Therefore, the presence of the applicant in the subject suit filed by respondent no.1 is neither necessary nor proper. It would only prejudice and delay the trial in the suit filed by respondent no.1.

12. I, therefore, find no merit in the present petition. The same is, accordingly, dismissed. The pending application also stands dismissed. There shall be no order as to costs.

13. It is made clear that this Court has not expressed any opinion on the merits of the Suit filed by the petitioner or by the respondent no.1.

NAVIN CHAWLA, J

OCTOBER 19, 2023/rv/AS