



2024:DHC:5478



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

% **Date of order: 15th July, 2024.**

+ C.R.P. 210/2024, CM APPL. 39172/2024 & CM APPL. 39173/2024
M/S KRIMM BUSINESS SOLUTIONS PVT LTD THROUGH ITS
DIRECTOR MR SHREE NARAIN GUPTAPetitioner
Through: Dr. T.R. Naval and Mr. Aakash
Naval, Advocates.

versus

JAGDISH PRASAD AGGARWAL (SINCE DECEASED)
THROUGH LRS & ANR.Respondents
Through: Mr. Naman Joshi, Mr. Guneet Sidhu,
Mr. Shivam Gera and Mr.
Radharaman Rajoriya, Advocates for
R-1.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 115 the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of the petitioner seeking setting aside of the order dated 8th April, 2024 (hereinafter "impugned order") passed by the learned Presiding Officer, MACT-01 (Central), Tis Hazari Courts, Delhi in civil suit bearing CS DJ No. 16606/2016.
2. The respondent No.1 (plaintiff before the learned Trial Court) had filed a civil suit against one Mr.Surinder Kumar Gupta and the petitioner company (defendants No.1 and 2 before the learned Trial Court respectively) seeking the relief of declaration of sale deed dated 7th May, 2015 executed



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by the defendant No.1 in favour of defendant No.2 as null and void. In the said civil suit, the defendant No.2, i.e., the petitioner herein had filed an application under Order VII Rule 11 of the CPC seeking rejection of the plaint on various grounds. Furthermore, the respondent No.1, i.e., the plaintiff had also filed an application under Order VI Rule 17 of the CPC seeking amendment of the plaint.

3. Vide the impugned order dated 8th April, 2024, the learned Trial Court dismissed petitioner's application filed under Order VII Rule 11 of the CPC and allowed the application of respondent No.1 filed under Order VI Rule 17 of the CPC. Being aggrieved by the same, the petitioner has approached this Court by way of the instant civil revision petition.

4. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is bad in law and is liable to be set aside, since the same has been passed without taking into consideration the entire facts and circumstances of the case.

5. It is submitted that the learned Trial Court failed to appreciate that the petitioner had averred in the application under Order VII Rule 11 of the CPC that as per pleadings of the respondent No.1, he is a co-owner only to the extent of 6.25% undivided share in the suit property. The petitioner has become the owner of the suit property by purchasing the same from the owners of the suit property.

6. It is submitted that as per the sale deed dated 7th May, 2015, filed by the respondent No.1/plaintiff along with the suit, the transaction value of the said sale deed was Rs.1,82,00,000/-, however, the respondent No.1



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undervalued the suit only for Rs.30,00,000/-. The respondent No.2 has paid the Court fee of Rs.20/- whereas he is required to pay *ad-valorem* duty on the transaction value of the sale deed.

7. It is submitted that the co-owner, as alleged by the respondent No.1, who sold the entire suit property despite of allegedly having their shares of 93.75% were legally entitled to sell the suit property to the petitioner to comply with the terms and conditions and decision of an award/order dated 7th April, 2015 passed in an arbitration matter.

8. It is submitted that the suit for declaration simpliciter is not maintainable without seeking any relief for possession as the respondent no. 1 is not in possession of any portion of the suit property.

9. It is submitted that the respondent No.1, who allegedly has undivided share mere 6.25% in the suit property, has no justifiable claim to get the relief of declaration or possession against the petitioner who has acquired ownership of entire suit property including the alleged share of 6.25% of the respondent No.1.

10. It is submitted that the learned Trial Court erred in law by failing to appreciate that the claim made by the respondent No.1 is unlikely to succeed. It is further submitted that the plaint lacks material particulars as to how the respondent No.1 has become owner of 6.25% share of the suit property.

11. It is submitted that the respondent No.1 failed to implead the co-owners of the suit property who had relinquished their rights in the suit property in favour of the defendant No.1/respondent No.2 by executing



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relinquishment deed as mentioned in the sale deed dated 7th May, 2015, despite the fact that the respondent No.1 is claiming to have a joint possession with them, and hence, the suit is liable to be dismissed for non-joinder of necessary parties.

12. It is submitted that the learned Trial Court wrongly arrived at the conclusion that the absence of co-owners of the suit property who had relinquished their rights in the suit property in favour of the respondent No.2 will not affect the decree.

13. It is submitted that the learned Trial Court failed to appreciate that the application of the respondent No.1 filed under Order VI Rule 17 of the CPC is not maintainable since the said application was filed on 12th June, 2022, i.e., after filing of the suit on 7th April, 2016.

14. It is further submitted that the said application has been filed to cure the defects as the petitioner contested the suit of the respondent No.1 *inter alia* on the grounds that suit of the respondent No.1, merely seeking declaration without seeking consequential relief of possession was not maintainable under Section 34 of the Specific Relief Act, 1963 (hereinafter “the Act”).

15. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and reliefs be granted as prayed for.

16. *Per Contra*, the learned counsel appearing on behalf of the respondent No.1 vehemently opposed the instant petition and submitted that the same is a gross misuse of the process of law and liable to be dismissed, being devoid of any merit.



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17. It is submitted that the respondent No.1 (plaintiff), being the co-owner of the suit property is deemed to be in legal and physical possession of the suit property along with other co-owners, and the plaintiff has never been dispossessed from the suit property physically or legally in any manner whatsoever by other co-owners in accordance with the law.

18. It is submitted that the objections raised by the petitioner in the application filed under Order VII Rule 11 of the CPC does not fall within the jurisdiction of the said provision and the same are to be decided during the trial. Thus, no ground for rejection of plaint has been made out by the petitioners and the said fact has been rightly considered by the learned Trial Court.

19. It is submitted that there is no illegality in the impugned order and the same has been passed after taking into consideration the entire facts and circumstances of the case.

20. It is submitted that the learned Trial Court has correctly examined the contents of the plaint and only after meticulous examination of the same, it has arrived at the finding that no case is made out by bare reading of the averments made in the plaint.

21. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

22. Heard the learned counsel appearing on behalf of the parties and perused the material placed on record.

23. It is the case of the petitioner that the plaint of the petitioner is liable to be rejected under Order VII Rule 11 of the CPC due to non-joinder of



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necessary parties, failure to pay *ad valorem* duty, barred under proviso to Section 34 of the Act as consequential relief has not been claimed, and barred under Order II Rule 2 of the CPC as a previous suit filed by the petitioner was withdrawn. It has been submitted that the learned Trial Court erred in allowing application of the respondent No.1 filed under Order VI Rule 17 of the CPC wherein the respondent No.1 has been allowed to amend the prayer by adding the consequential relief of possession which is an afterthought and not *bona fide*. It has been further contended that the co-owner, as alleged by the respondent No.1, who sold the entire suit property despite of allegedly having their shares of 93.75% were legally entitled to sell the suit property to the petitioner to comply with the terms and conditions and decision of an award/order dated 7th April, 2015 passed in an arbitration matter. Moreover, the respondent No.1, who allegedly has undivided share mere 6.25% in the suit property has no justifiable claim to get the relief of declaration or possession against the petitioner who has acquired ownership of entire suit property including the alleged share of 6.25% of the respondent No.1. It has also been contended that the learned Trial Court erred in holding that the plaint is not liable to be rejected for non-joiner of the necessary parties, i.e., the other co-owners of the suit property. Therefore, the instant petition may be allowed and the impugned order may be set aside.

24. In rival submissions, the respondent No.1 has refuted the contentions of the petitioner and submitted that the arguments advanced by the petitioner are baseless and without any evidence. Further, there is no illegality in the



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impugned order and the learned Trial Court has rightly exercised the jurisdiction conferred to it under Order VII Rule 11 of the CPC wherein, in order to decided an application under the said provision, only the contents made in the plaint are to be seen, and the learned Court below has rightly held that no case of rejection of plaint is made out upon the reading of the averments made in the plaint. Thus, the instant petition may be dismissed.

25. Now this Court shall peruse the impugned order, relevant extracts of which are as under:

“..2. The dispute between the parties dates back to the year 1973 and a preliminary decree deterring the shares of the family members of one Sh. Rai Sahib Chiranji Lal, of whom the plaintiff is one of the descendants has been passed vide order dated 19.10.1978. The said order has not been challenged and thus, the same has become final. It is imperative to point that the final decree has not been passed till date and a separate suit for the same is still pending. The present suit was filed by the petitioner Sh. Jagdish Prasad Aggarwal who has since expired and the same is now being pursued by his two sons, Sh. Sanjay Aggarwal and Sh. Bharat Aggarwal. The main claim in the present suit is a relief of declaration seeking to get the sale deed executed by defendant no. 1 in favour of defendant no. 2 declared as null and void. It is the case of the petitioner that the defendant no. 1 has executed the said sale deed in contravention of order dated 22.12.2020 passed by Hon'ble High Court of Delhi and without taking the consent of the rest of the co-owners.

(a) Non-joinder of necessary parties:

4. Before delving into the merits of the case to find out if the plaintiff has failed to make the necessary parties as parties in the present case, it is imperative to find out who are necessary



*parties. In the case of **Mumbai International Airport Pvt. Ltd vs Regency Convention Centra & Hotels & Ors AIR 2010 SC 3109**, Hon'ble Supreme Court held as follows:....*

5. The consequence of non-joinder of necessary party has been provided for in Order I Rule 9 CPC as per which "No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it: Provided that nothing in this rule shall apply to non-joinder of a necessary party. "

*6. Therefore, it is mandatory to determine whether there is a necessary party that has not been made a party in the suit as the consequences are grave. Hon'ble Supreme Court explained the consequences of non-joining of necessary party in the case of **Moreshar Yadaorao Mahajan vs Vyankatesh Sitaram Bhedi(D) Tr.Lrs. on 27 September, 2022** as follows:...*

7. From the above, it is clear that two tests have to be satisfied for determining the question who is a necessary party. The first test is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings and secondly, no effective decree can be passed in the absence of such party.

8. In the case at hand, it is an admitted position on behalf of the plaintiff that he and defendant no. 1 are co-owners in the suit property along with other co-owners. It is also admitted on his behalf that the other coowners have not given their explicit consent to the sale of the property by defendant no. 1 to defendant no. 2 as also the fact that he has not made them a party in the present suit. However, by way of the present suit, the petitioner has only claimed a relief of declaration to get the sale deed declared as null and void. Clearly, the validity of the sale transaction and the legality of the execution of the sale deed can be decided on the basis of the orders passed by



various courts in the other litigation as well as upon determining the right and title of the defendant no. 1 to sell the property. Although, it cannot be denied that the remaining co-owners (i.e. non-parties) also have an interest in the present litigation and they are proper parties to the present suit but as far as them being necessary parties is concerned, this Court is of the view that they do not meet the two stage test as neither does the plaintiff have any relief against any of them since they have not violated the orders nor is it not possible to pass an effective decree in their absence. All that this Court is required to decide is whether the defendant no. 1 had a right, title and interest to execute the sale deed in question in favour of defendant no. 2. Therefore, it is concluded that the other co-owners are not necessary parties to the present suit and thus, the present suit is not bad for non-joinder of necessary parties.

(b) Failure to pay ad valorem duty:

9. It is the case of the defendant no. 2 that the plaintiff has failed to pay the ad valorem duty i.e. the duty as per the value of the property but the plaintiff contends that he had filed only a suit for declaration for which only Rs. 20/- court fee is liable to be paid. As per entry 17 (iii) in Schedule II of the Court Fee Act, 1870, Ten Rupees Court fee is liable to be paid where no consequential relief is sought. Therefore, this ground is also dismissed.

(c) Barred under proviso to section 34 Specific Relief Act as consequential relief has not been claimed:...

11. It is the case of the defendant no. 2 that the plaintiff has not claimed the consequential relief of possession and thus, the simplicitor suit for declaration is not maintainable.

12. The law relating to claiming of consequential relief in a suit for declaration has been crystallised in the case of Vasantha



(Dead) Thr. Lr. V. Rajalakshmi @ Rajam (Dead) Thr. Lrs. Civil Appeal No. 3854 of 2014 wherein the Hon'ble Supreme Court observed that the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief. The Apex Court held that in the instant case, Suit of Declaration was filed, though Gopalkrishnan was admittedly not in possession of the Suit Property. Thus, the Suit was barred by the Proviso of Section 34 of the SRA, and ought to have been dismissed solely on such ground as held by the High Court. The Supreme Court further observed that after the death of Pavunammal in 2004, there was no attempt made by Gopalkrishnan to amend the Plaint to seek the recovery of possession, which could have been done at any stage of the Suit, even at the Second Appeal stage. Thus, the Supreme Court answered the second issue in the favour of the Appellant and against Gopalkrishnan.

*13. In the present case also, the plaintiff has sought a relief of declaration without claiming the relief of possession. However, the plaintiff has also filed an application under Order VI Rule 17 CPC by way of which, the plaintiff has sought amendment of the pleadings so as to include the relief of possession. Ld. Counsel for defendant no. 2 had argued that the said application cannot be allowed as it is highly belated and filed only to avoid dismissal of the plaint under Order VII Rule 11 CPC. He argued that the application under Order VI Rule 17 CPC is only an afterthought and cannot be allowed. On the other hand, Ld. Counsel for the plaintiff argued that the case has not commenced till now and no loss will be caused to the defendants if the application is allowed. She has relied upon the judgments of **Gaganmal Ramchand v. The Hongkong & Shanghai Banking Corporation; Dera Baba Bhumman Shah Sangar Sarista v. Subhash Narula and Sampath Kumar v. Ayyakannu and Ors.** whereby amendments of pleadings were allowed.*



14. In the case of **Dera Baba (supra)**, it was held that "In any case, the pending application under Order 6 Rule 17 CPC ought to have been decided prior to the decision in the application under Order 7 Rule 11 CPC." Further, in the case of **Sampath Kumar (supra)**, case of **Mst. Rukhmabai v. Lala Laxminaraya and Ors** was cited wherein it was held that "this Court has taken the view that where a suit was filed without seeking an appropriate relief, it is a well settled rule of practise not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so."

15. From the above judgements, it is clear that where the plaintiff has sought to amend the plaint in order to seek an additional relief, the application under Order VI Rule 17 CPC should be allowed rather than dismissing the suit. Also, even the issues have not been framed in the present case, thus, the case has not even commenced. Thus, considering the entire circumstances and in the interest of justice, the application under Order VI Rule 17 CPC is allowed and the plaintiff is at liberty to file an amended plaint incorporating the relief of possession.

(d) Barred under Order 2 Rule 2 CPC and Order 23 Rule 1 CPC as a previous suit filed by the petitioner was withdrawn.

16. Ld. Counsel for the plaintiff has pointed out that the plaintiffs have already filed the order dated 06.04.2016 by virtue of which the plaintiffs were granted the liberty to file a fresh suit on the same cause of action. In view of the said order, the present suit is not barred under Order II Rule 2\ CPC or Order 23 Rule 1 CPC.

Conclusion:-

17. In view of the above, the application of defendnat no.2 under Order VII Rule 11 CPC is dismissed and the application



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of the plaintiff under Order VI Rule 17 CPC is allowed. The plaintiff shall file the amended plaint within 10 days from today and supply an advance copy of the same to Ld. Counsels for the defendants before the next date of hearing. The plaintiff shall also value the suit at the current value of circle rate of the property and pay the requisite ad valorem stamp duty. The applications are accordingly, disposed off...”

26. Upon perusal of the above extracts of the impugned order, it is made out that the dispute between the parties traces back to the year 1973 concerning the estate of Sh. Rai Sahib Chiranji Lal. A preliminary decree passed on 19th October, 1978, determined the shares of family members, including the plaintiff (respondent No.1 herein), a descendant of Sh. Rai Sahib Chiranji Lal. This decree remained unchallenged and final, pending a conclusive decree and another ongoing suit. The respondent No.1, Sh. Jagdish Prasad Aggarwal, initiated the present suit, which is now pursued by his sons, Sh. Sanjay Aggarwal and Sh. Bharat Aggarwal, following his demise. The primary relief sought was a declaration to nullify a sale deed executed by defendant No.1 (petitioner herein) in favor of defendant No.2. The petitioner alleged that this deed violated a 22nd December, 2020, Delhi High Court order and was executed without consent from all the co-owners.

27. In the aforesaid impugned order, the learned Court below dealt with the application of the petitioner filed under Order VII Rule 11 of the CPC. The petitioner raised the issue of non-joinder of necessary parties, citing various judgments to argue about necessary parties for effective decree. With regard to the same, the learned Trial Court concluded that while other



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co-owners had an interest, they were not necessary parties since relief was sought only against the defendant No.1 therein.

28. The petitioner had also claimed that the plaintiff failed to pay *ad valorem* Court duty and the learned Trial Court observed that the plaintiff (respondent No.1) relied upon the Court Fee Act, 1870, Schedule II, entry 17 (iii) as per which the minimal Court fee due to a suit for declaration is Rs.10/- and accepting the plaintiff's arguments, it rejected the petitioner's claim. The petitioner had also argued that the suit was barred under Section 34 of the Act for lack of consequential relief of possession. In regard to the same, the learned Trial Court observed that the respondent No.1 had sought amendment under Order VI Rule 17 of the CPC by seeking consequential relief of possession and since the trial in the suit had yet not been commenced, the learned Court below allowed the amendment application, and rejected the petitioner's argument. Further, the petitioner had contended that the suit is barred under Order II Rule 2 of the CPC and Order XXIII Rule 1 of the CPC due to a previous withdrawal. Taking into consideration that the respondent No.1/plaintiff had liberty to file a fresh suit, the learned Court below rejected the objection taken by the petitioner. In conclusion, the learned Trial Court dismissed the petitioner's application under Order VII Rule 11 of the CPC and allowed the application of respondent No.1 filed under Order VI Rule 17 of the CPC to amend the plaint.

29. Therefore, the issue before this Court is to ascertain as to whether the learned Trial Court erred in passing the impugned order while exercising powers conferred to it under Order VII Rule 11 of the CPC.



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30. Summarily stated, the petitioner, in his application under Order VII Rule 11 of the CPC, prayed for rejection of the plaint of respondent No.1 on the following grounds and the same shall be dealt with separately by this Court:

- a. Non-joinder of necessary parties.
- b. No consequential relief sought.
- c. Failure to pay *ad valorem* duty.
- d. Barred under Order II Rule 2 and Order XXIII Rule 1 of the CPC.

Non-joinder of necessary parties

31. Before delving into the merits of the instant issue, it is imperative to state the settled position of law with respect to non-joinder of the necessary parties.

32. In CPC, Order I Rule 9 provides for the consequence of non-joinder of the parties as per which the impleadment of same is a mandate and Order I Rule 10 of the CPC provides for the powers of a Court to direct striking out or impleading of a party if necessary. In ***Vijay Kumar Kaul v. Union of India, (2012) 7 SCC 610***, while reiterating the distinction between a necessary party, proper party and *pro forma* party, the following was observed:

“...38. In Public Service Commission v. Mamta Bisht [(2010) 12 SCC 204 : (2011) 1 SCC (L&S) 208 : AIR 2010 SC 2613] this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter



when the selection process is assailed observed thus : (SCC pp. 207-08, paras 9-10)

“9. ... in Udit Narain Singh Malpaharia v. Board of Revenue [AIR 1963 SC 786] , wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called ‘CPC’) provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat [AIR 1965 SC 1153] , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [(1974) 2 SCC 706 : AIR 1974 SC 2105] and Sarguja Transport Service v. STAT [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] .)

10. In Prabodh Verma v. State of U.P. [(1984) 4 SCC 251 : 1984 SCC (L&S) 704 : AIR 1985 SC 167] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119 : AIR 2008 SC Supp 824] , it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.”..

39. From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of audi alteram partem is not put into any hazard...”



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33. Upon perusal of the above judgment, it is made out that a necessary party is someone in whose absence no effective order can be passed and in case an order has been passed in the absence of such necessary party, the same is liable to be set aside since the same affects the right of that necessary party. Also, the impleadment of a necessary party is pertinent for effective and adequate adjudication of the dispute before the Court. Further, it is the duty of the litigant to ensure that the necessary party is before the Court, be it the plaintiff/petitioner to the defendant/respondent.

34. In ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.***, (2010) 7 SCC 417, the Hon'ble Supreme Court established the criteria to determine as to when a party can be called as a necessary party or a proper party.

35. In the said judgment, it was held that a necessary party is the one whose impleadment in the suit is mandatory to pass an effective order, whereas a proper party is the one whose presence is not mandatory for the adjudication but his presence will assist the Court to effectively adjudicate upon the dispute. The relevant paragraphs are as under:

“..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



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property, after 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.

18. In Kasturi [(2005) 6 SCC 733] this Court reiterated the position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance. This Court held that necessary parties are those persons in whose absence no decree can be passed by the court or those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings; and that proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person...”

36. In the instant case, the petitioner contends that the respondent No.1 has not made the other co-owners a party to his suit and since the co-owners are necessary parties, the suit is liable to be rejected for non-joinder of necessary parties.

37. In paragraph No. 8 of the impugned award, the learned Trial Court has decided the issue of non-joinder of necessary parties and held that although the interest of other co-owners (non-parties) is also a concern in the suit, however, it is not the case that no effective order could be passed in the suit in the absence of remaining co-owners as the parties already impleaded in the suit and the documents such as previous Court orders determining the title and interest of other co-owners are sufficient and adequate to assist the Court in deciding the suit.



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38. It is observed by this Court that the suit was filed seeking the relief of declaration of a sale deed dated 7th May, 2015 executed by the defendant No.1 in favour of the defendant No.2 (respondent No.1 herein) as null and void. In the memo of parties, the plaintiff therein had impleaded defendant No.1 and defendant No.2 as defendants.

39. Defendant No.1 is stated to be the co-owner of the suit property and the party against whom it was alleged that he sold the suit property without the consent of other co-owners. Defendant no. 2/respondent No.1 is stated to be the party who purchased the suit property from the defendant No.1 without the consent of its co-owners.

40. In his civil suit, the respondent No.1 is challenging the validity of the aforesaid sale deed stating that the same has been executed without his consent as well as without the consent of other co-owners. Therefore, *qua* the said relief, plaintiff, defendants No.1 and 2 are the necessary parties since the allegations have been made against the said defendants in whose absence the validity of the sale deed cannot be decided. Further, the learned Trial Court in the said suit has to determine whether the defendant No.1 had the title to sell the entire suit property or not, hence, impleadment of defendant No.1 as the co-owner is sufficient in light of the averments made in the plaint.

41. This Court is of the view that the learned Trial Court has rightly held that the parties already impleaded to the present suit are necessary parties and the remaining co-owners are merely proper party and it is held that upon reading of the averments made in the plaint, nothing otherwise is



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decipherable. Thus, this Court does not find any infirmity in the findings of the learned Trial Court.

Failure to pay ad valorem duty

42. As per the material available on record, the respondent No.1 has paid a sum of Rs.20/- as Court fee. The petitioner herein contends that the plaintiff/respondent No.1 ought to have paid Court fee in terms of the value of the suit property, and hence, the plaint is liable to be rejected due to insufficient Court fee.

43. With regard to the instant issue, it is observed by this Court that as per the Schedule II, Entry 17 (iii) of the Court Fee Act, 1870, Rs.10/- Court fee is to be paid where no consequential relief has been prayed along with the relief of obtaining a declaratory decree. The said provision is reproduced hereinbelow for reference:

17. Plaint or memorandum of appeal in each of the following suits:—

(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court;

(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates;

(iii) to obtain a declaratory decree where no consequential relief is prayed ;

.. Ten rupees.

44. In view of the above, this Court does not find any error of law in the findings of the learned Trial Court in determining that the respondent No.1



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has paid appropriate Court fee, and thus, the petitioner's arguments are rejected.

Barred under Order II Rule 2 and Order XXIII Rule 1 of the CPC

45. As per the contents of the plaint, the plaintiff had filed a civil suit on 31st March, 2016 for cancellation of the aforesaid sale deed and the said suit got listed before the Civil Judge on 1st April, 2016 who did not have the pecuniary jurisdiction to try and entertain the suit, and accordingly, the said suit was withdrawn with liberty to approach the appropriate forum.

46. In paragraph No.16 of the impugned order, it has been observed by the learned Trial Court that vide order dated 6th April, 2016, the plaintiff/respondent No.1 was granted liberty to file a fresh suit on the same cause of action.

47. Taking into consideration the fact that the plaintiff was granted liberty to file a fresh suit vide order dated 6th April, 2016, the petitioner's objection that the suit is barred under Order II Rule 2 and Order XXIII Rule 1 of the CPC cannot be accepted. The same is also apparent from the bare reading of the averments made in the plaint.

No consequential relief sought

48. Lastly, the petitioner prays that the plaint is liable to be rejected on the ground that the respondent No.1 has failed to seek a consequential relief of possession and as per Section 34 of the Act, such simplicitor suit for declaration is not maintainable.

49. With regard to the aforesaid, it is observed by this Court that the learned Trial Court had allowed the respondent's application under Order VI



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Rule 17 of the CPC whereby the plaintiff had sought for amendment of his plaint. In the said application, the plaintiff had sought for addition of consequential relief namely possession of the suit property along with the relief of declaration of sale deed as null and void.

50. It is also observed by this Court that the aforementioned suit is in its initial stage and trial is yet to be conducted, and the suit has not reached the stage of evidence and examination, and even the issues have not been framed yet, as also observed by the learned Trial Court in paragraph No.15 of the impugned order.

51. Therefore, this Court is of the view that no prejudice will be caused to the defendants before the learned Court below, in the event the application for amendment is allowed. Moreover, as per the judgment of the Hon'ble Supreme Court in the matter of *Sampath Kumar v. Ayyakannu*, (2002) 7 SCC 559, a defendant is not prejudiced when the amendment is sought before the commencement of the trial. In the said judgment, it was also held that delay in filing the application for amendment is not a ground for rejecting the application.

52. In the above said judgment, it was also observed by the Hon'ble Supreme Court that as per the one of the earlier judgments passed in *Rukhmabai v. Lala Laxminarayan*, 1959 SCC OnLine SC 9, a civil suit may not be dismissed automatically just because the plaintiff had not prayed for a consequential relief, and in such an event the Court may allow the plaintiff to make necessary amendments.



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53. In view of the aforesaid facts and circumstances, this Court finds no error in the findings of the learned Trial Court whereby it has allowed the application seeking amendment of plaint. Taking the same into consideration, the objection of the petitioner that the plaint is liable to be rejected as no consequential relief has been sought does not survive and thus, rejected. Further, in paragraph No.17 of the impugned order, the learned Court below has directed the plaintiff to pay the requisite *ad valorem* duty. Hence, no contravention of law is apparent on the face of the record.

54. As discussed in the foregoing paragraphs, the learned Trial Court in the instant case considered the arguments raised on behalf of the petitioner in its application under Order VII Rule 11 of the CPC, and rightly appreciated the law laid down *qua* the objections so raised.

55. Therefore, this Court is of the view that is nothing in the impugned order which suggests that the learned Trial Court committed an error of jurisdiction or other error which goes to the root of the matter and invites the intervention of this Court while exercising its revisional powers. As held by the Hon'ble Supreme Court as well as this Court in a catena of judgments, it is not to be seen whether the suit will be successful or not at the initial stage since the merits of the same need not be entered into at the stage of deciding an application under Order VII Rule 11 of the CPC. In view of the same, it is pertinent to mention that the petitioner in the instant case will have sufficient opportunities to raise the objections during the stage of trial.

56. This Court is of the view that no case of revision as defined under Section 115 of the CPC has been made out by the petitioners. It is held that



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neither did the learned Trial Court acted illegally in exercising its jurisdiction nor is there any material irregularity in the impugned order.

57. In view of the aforesaid facts and circumstances, this Court does not find any reason to interfere with the impugned order passed by the learned Trial Court. Therefore, the impugned order dated 8th April, passed by the learned Presiding Officer, MACT-01 (Central), Tis Hazari Courts, Delhi in civil suit bearing CS DJ No. 16606/2016 is upheld and the instant petition, being devoid of any merit is liable to be dismissed.

58. Accordingly, the instant petition stands dismissed along with the pending applications, if any.

59. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 15, 2024
RK/RYP/AV