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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 01st August, 2024***+ **CM(M) 3073/2024 & CM APPL. 43450-43452/2024****JITENDER CHAWLA**PetitionerThrough: **Mr. Krishan Kumar, Advocate.**

versus

BINOD KUMAR BEGWANI & ANR.RespondentsThrough: **None.****CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. Petitioner is aggrieved by the order dated 17.05.2024 whereby his application moved under Order I Rule 10 read with Section 151 CPC has been dismissed.
2. Petitioner Jitender Chawla wants to get himself impleaded as a party in the present suit which is going on between Binod Kumar Begwani (plaintiff before the learned Trial Court) and Gulshan Chawla (defendant before the learned Trial Court).
3. I have seen the averments appearing in the plaint and according to the case set up by the plaintiff, he is the absolute owner of second and third floor of the suit property, situated at Shastri Park, Shahdara, Delhi, having purchased the same from none other than the defendant by virtue of a Registered Sale Deed dated 27.11.2012.



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4. According to the plaintiff, there was a rent agreement between him and the defendant and by virtue of such Rent Agreement dated 04.08.2014, the defendant was inducted as a tenant at a monthly rent of Rs.10,000/- and was permitted to remain in possession in the suit property, *albeit*, as a tenant in terms of the aforesaid rent agreement. The defendant, after making payment of rent for the initial months, stopped paying the rent and, resultantly, a legal notice was issued terminating the tenancy and it was in that background that the plaintiff has filed the present suit seeking possession, damages/mesne profit and permanent injunction.
5. Admittedly, the defendant, despite service, did not file his written statement and is being proceeded ex-parte.
6. The case of the applicant is very simple.
7. According to him, he is the real brother of the defendant and was in the possession of the first and third floor in the capacity of co-owner as the suit property was ancestral/Joint Hindu Family property and thus he had also the ownership rights over the aforesaid property. Therefore, the defendant was, even otherwise, not competent to sell the suit property, all alone.
8. It is contended that any sale done by the defendant in favour of the plaintiff is null and void and is not binding upon the applicant. It is contended that even the Rent Agreement is a sham document and, therefore, without his being before the learned Trial Court, the proper adjudication is not possible.



9. However, the basic averments made in the plaint are very clear and specific and, according to the case set up by the plaintiff, who is naturally a *dominus litis* of his case, the defendant was inducted as tenant and since he did not pay the rent, he is seeking not only his eviction from the tenanted premises but also seeking rent/mesne profit etc. The petitioner/applicant is not a tenant and, therefore, in view of the averments made in the suit and the manner in which the case has been set up by the plaintiff, the defendant cannot be said to be a necessary or proper party from any angle whatsoever.

10. The learned Trial Court while dismissing his application observed as under:-

“6. The plaintiff being dominus litis is required to establish his right over the property and the relationship of licensor/licensee/tenant for claiming the reliefs and it is always open to defendant to lead rebuttal evidence to contend otherwise. The question/validity of title which the plaintiff has acquired by way of the sale deeds executed by defendant might be defeasible by the applicant on the ground of being a co-owner or the property being joint family property but the same cannot be decided in the present proceedings. The impleadment of applicant would change the complexion of litigation and will raise such controversies as are beyond the scope of this suit. The applicant is free to establish its own claims and title whatever it may be in any independent proceedings before a competent forum. The decisions cited by the Ld. Counsel for applicant lay down the principles relevant for determining proper and necessary parties under order 1 rule 10, and in all fairness, the said judgments are not applicable in the facts and circumstances of the present case.

7. The presence of the applicant is thus, not necessary to enable the court to adjudicate upon and settle the questions involved in these proceedings. In view of the reasons cited above, the application stands dismissed and accordingly disposed off.”

11. I also do not find any reason to interfere with the impugned



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order passed by the learned Trial Court and to come to any different conclusion.

12. The petitioner is always at liberty to take appropriate recourse to law by filing a suit in substantive capacity but fact remains that there is no question of his being impleaded in the present suit which is altogether of a different nature.

13. Petition is, accordingly, dismissed.

14. Before parting, I wish to clarify that this Court has not commented upon the merits of the case as such. It will be always open to the plaintiff to prove his case in accordance with law.

(MANOJ JAIN)
JUDGE

AUGUST 01, 2024
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