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

+ **CM(M) 4069/2024**

KAVITA ANAND

.....Petitioner

Through: Mr. Umesh Kumar Choubey,
Advocate.

versus

KASHMIRI DEVI AND ORS

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **12.12.2024**

CM APPL. 72865/2024 (exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

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1. The present petition has been filed under Section 227 of the Constitution of India for setting aside the order dated 08.02.2024 passed by the learned Trial Court whereby the application of the respondents under Order 1 Rule 10 CPC has been allowed and petitioner has been ordered to be impleaded as defendant no.5 in the civil suit bearing no. 40/2019.

2. Respondent no.1 filed a suit for partition, possession, permanent injunction and rendition of accounts against the other respondents who are stated to be the sons and daughters of respondent no.1. Petitioner is the



daughter-in-law of respondent no.1

3. During the pendency of the suit, respondent no.1 filed applications under Order VI Rule 17 CPC, and Order 1 Rule 10 CPC and the Trial Court passed the order and the relevant para reads as follows:-

11. It is the case of the plaintiff that the proposed defendant Kavita Anand is the wife of defendant no.1 in whose name the properties were allegedly purchased by the defendant no.1 from the funds of Bhim Sain which were to be used for clearance of the dues/outstanding/instalment towards the flat allotted by the GDA ie. bearing no.E-LIG/184A, Madhuban Bapu Dham, Ghaziabad, U.P. The truth or falsity of the same is a matter of trial. Considering the fact that the application u/o. VI Rule 17 r/w section 151 CPC filed by the plaintiff is allowed, **the application of the plaintiff under order 1 rule 10 CPC is allowed, and Mrs. Kavita Anand is impleaded as defendant no.5.** The plaintiff is directed to place on record fresh amended memo of parties reflecting the same.

4. The main grievance of the learned counsel for the petitioner is that, without there being any document on record to show that the funds of Bhim Sain were used for clearance of the dues/outstanding/instalment of the flat, the petitioner has been impleaded by the learned Trial Court. It is further submitted that the impugned order is erroneous inasmuch as the application under Order VI Rule 17 CPC has been allowed before allowing the application under Order I Rule 10 CPC.

5. In civil cases, plaintiff is *dominus litis*. The doctrine of dominus litis grants the plaintiff the right to choose suit parties. Of course this right is not absolute but subject to Order I Rule 10 CPC.

6. Plaintiff has made specific averments regarding flat being purchased out of the funds of Bhim Sain. The learned Trial Court has rightly concluded that truth or falsity of the same is a matter of trial. By allowing the application under Order 1 Rule 10 CPC, the Trial Court has rather sought to avoid multiplicity of litigation.



7. There is no legal requirement that application under Order 1 Rule 10 CPC has to be decided before disposing the application under Order VI Rule 17 CPC. To the contrary, pleadings should first be amended and only thereafter the application under Order 1 Rule 10 CPC should be decided, based upon amended averments placed on record.

8. In my view, there is no ground for interfering with the impugned order passed by the learned Trial Court. The petition is accordingly dismissed.

RAVINDER DUDEJA, J

DECEMBER 12, 2024 /ib