



\$~57

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

% ***Date of Decision: 24th March, 2025***

+ **CM(M) 535/2025 & CM APPL. 16894-16896/2025**

RAJNI SINGH

.....Petitioner

Through: Ms. Anju Lal with Mr. Rajeev
Sharma, Ms. Shalu Lal, Advocates
with petitioner in person.

versus

CHATTAR SINGH SAINI (DECEASED) THR LR & ORS.

.....Respondents

Through: Mr. Divyakant Lahoti with Mr. Kartik,
Lahoti, Ms. Shreya Goel, Mr. Manish
Gandhi and Mr. Rajendra Metwani,
Advocates for respondent No.1.
Mr. I. S. Chauhan and Ms. Nisha
Chauhan Advocate for Respondent
No. LRs. of 2, 3 and 4.
Mr. Jugal Bagga, Advocate for
Respondent No.5/Babu Ram Saini
Mr. Anand Prakash, Standing Counsel
for MCD with Ms. Varsha Arya,
Advocates for respondent No.6.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Sh. Chattar Singh Saini (since deceased) had filed a suit for declaration, permanent injunction and mandatory injunction. Such suit was filed way back in year 2011 and plaintiff, *inter alia*, sought a decree of mandatory injunction. The abovesaid suit was later on amended and plaintiff prayed for a *decree of possession* in respect of suit property, situated at Village Masjid



Moth, Tehsil Hauz Khas, New Delhi.

2. When the abovesaid suit was at the stage of final arguments, an application was moved by Ms. Rajni Singh (petitioner herein) and Mr. Jagdish Chandra (since deceased) to intervene in the matter. They requested for their impleadment contending that the first floor and the second floor of the same property had been purchased by them vide sale deeds dated 29.10.2015 and 30.12.2016.
3. Such application was allowed by learned Trial Court on 05.08.2024 and they were, accordingly, impleaded as defendants. It seems that the abovesaid request was not even opposed by plaintiff as they did not want any further delay in the disposal of their suit.
4. Mr. Jagdish Chandra (since deceased) as defeandant No.9.
5. While permitting the impleadment, opportunity was also granted to both the defendants to file written statements.
6. However, they did not file any written statement and rather moved two different applications.
7. By virtue of one application moved under Order VII Rule 11, the newly impleaded defendants sought rejection of the plaint and by virtue of another application moved under Order I Rule 10(4) CPC read with Section 151 CPC, they contended that they could not have been called upon to file written statement as there was no amended plaint. Both the abovesaid applications were taken up by learned Trial Court and has been disposed of by common order dated 13.01.2025.
8. Such order is under challenge.
9. Ms. Anju Lal, learned counsel for the petitioner submits that the grievance in the present petition is merely restricted to the order so far as it



relates to disposal of their application moved under Order I Rule 10 (4) CPC. She submits that while disposing of the abovesaid applications, learned Trial Court has even dropped them from array of parties which has caused serious prejudice to them.

10. Order I Rule 10(4) CPC read as under:-

“10. Suit in name of wrong plaintiff.—

(1).....

.....

(4) Where defendant added, plaint to be amended.—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.”

(5).....”

11. Admittedly, earlier, there was an injunction order with respect to the suit property which was passed by learned Trial Court way back on 05.03.2013 and in view of the statement made by learned counsel for defendant Nos.1 to 3 and the statement made by defendant No.4 himself, the defendants were directed not to raise any illegal or unauthorized construction in the suit property and they were also directed not to sell, alienate or transfer the same without permission of the Court.

12. Learned counsel for the respondent/plaintiff, who appears on advance notice, submits that the abovesaid property was sold by defendant No.4, despite there being a clear-cut injunction order against him. He submits that though petitioner herein was added as a party to the proceedings, later on, but that does not give her any handle to stall the entire proceedings and to make a request to have trial, *de novo*. It is also submitted that learned Trial Court granted them permission to file written statements and such opportunity was not availed. On the contrary, they moved applications under Order VII Rule 11 CPC and under Order I Rule 10(4) CPC, despite fact knowingly fully well



that role in the present proceedings is very limited. It is submitted that though they claimed themselves to be the *bona fide* purchasers, there is some apparent collusion between them and defendant No.4 as the property was sold way back in the year 2016 and no step, whatsoever, was taken by them to get themselves impleaded.

13. Learned counsel for the petitioner, during course of the arguments, reiterated that, at the moment, she does not challenge the dismissal of her application moved under Order VII Rule 11 CPC. She submits that even if her application moved under Order I Rule 10 (4) CPC had no merit, learned Trial Court should not have deleted their names from the array of parties. It is reiterated that such impleadment order was passed with no objection coming from the side of plaintiff and, therefore, there was no reason or occasion for the learned Trial Court to have deleted their names from the array of parties.

14. Undoubtedly, learned Trial Court, while disposing of the abovesaid application moved under Order I Rule 10(4) CPC, has gone way beyond and has even directed that defendant Nos.8 and 9 be deleted from the array of parties. Once they had been permitted to be added as defendants in the suit, that too with the 'no objection' coming from the other side, they should not have been deleted or dropped from the array of parties, merely because they had moved application under Order I Rule 10(4) CPC.

15. This Court may also highlight one aspect in context to the abovesaid statutory provision.

16. When the abovesaid defendants were impleaded, they were given a specific opportunity to file written statements. The defendants should have filed written statements reserving their all other rights and contentions but



instead of filing written statements, they rather moved the abovesaid application seeking a direction from learned Trial Court to plaintiff to amend the plaint. The plaintiff is the *dominus litus* and unless and until the Court directs the suit to be amended, defendant, in such a situation, cannot seek a mandatory direction in this regard to the plaintiff.

17. Be that as it may, keeping in mind that the suit is of the year 2011 and is already at the stage of final arguments since July, 2021, the present petition is disposed of with direction that defendant No.8 and *successor-in-interest* of defendant No.9, shall remain on record and would be permitted to participate in the proceedings in accordance with law and would be at liberty to submit arguments before the learned Trial Court.

18. The petition, along with pending applications, stands disposed of in the aforesaid terms.

19. This Court clarifies that it has not given any observation with respect to the merits of the case and, therefore, learned Trial Court shall be at liberty to decide the case, totally uninfluenced by this order.

(MANOJ JAIN)
JUDGE

MARCH 24, 2025/st/shs