



\$~11(Appellate-2022 list)

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

+ CM(M) 813/2019 & CM APPL. 24810/2019

RAMVIR SINGH

..... Petitioner

Through: Ms.Zehra Khan and
Ms.Shubhika Saluja, Advs.

versus

SANGEETA AGGARWAL & ORS

..... Respondents

Through: Ms.Anshoo Saxena, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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31.03.2022

1. This petition under Article 227 of the Constitution of India, impugns an order dated 13th February, 2019, passed by the learned Civil Judge, whereby the application, under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC), preferred by the petitioner for being impleaded as a party in CS 52353/2016, has been dismissed.

2. CS 52353/2016 was filed by Respondent 1, Sangeeta Aggarwal against Respondents 2 to 8. In order to avoid confusion, the parties would be referred to by their first names.

3. Sangeeta, in her suit, claimed to be “the owner and in possession of the plot of land measuring 500 Sq. Yds. forming part of khasra no.235, 236, 237, 238 and 239, situated in Village Jaitpur, Abadi, Tehsil Mehrauli, Badarpur, New Delhi-110044” (hereinafter



“the said property”). Sangeeta claimed to have purchased the suit property from one Bijender Singh under a duly notarized general power of attorney dated 23rd December, 1996 after paying the entire sale consideration to the said Bijender Singh, consequent whereon it was claimed that Bijender Singh had given physical possession of the property to Sangeeta. At the time possession when the suit property would have to be handed over to Sangeeta, according to her, Bijender Singh represented that the property was free from all encumbrances. Sangeeta claimed, thereafter, to be in settled possession of the suit property, to the exclusion of all other persons.

4. She also claims to have erected certain constructions on the suit property.

5. Respondents 2 to 8, according to the pliant, were residents of an adjoining locality, who had an “evil eye” on the suit property and were making efforts to take possession thereof, and dispossess Sangeeta therefrom. Suffice it to state that, predicated on these factual assertions, Sangeeta, in her suit, sought a decree of permanent injunction in her favour and against Respondents 2 to 8, restraining them from interfering with the peaceful use, occupation and enjoyment, by Sangeeta, of the suit property.

6. During the pendency of the proceedings before the learned Civil Judge, the petitioner Rambir Singh moved an application under Order I Rule 10 of the CPC, seeking impleadment in the suit. He asserted that his mother Ramshri Devi had purchased the suit property from



Bijender Singh on 20th January, 1996 under a GPA, agreement to sell and purchase affidavit and receipt and that consequent to the demise of Ramshri Devi in 2003, he was the lawful owner and successor to her estate, which included the suit property. He also claimed to have been in possession of the suit property. He specifically denied, in his application, the claim to ownership and possession of the suit property, as advanced by Sangeeta in her suit.

7. In view of the assertions contained in the application, Rambir claimed that he was a necessary party in the proceedings and sought to be impleaded therein.

8. The learned Civil Judge has, however, by the impugned order dated 13th February, 2019, dismissed Rambir's application under Order I Rule 10. The reasoning of the learned Civil Judge is contained in the following passage from the impugned order:

“The Plaintiff case herein is for relief of injunction simplicitor, against the Defendants arraigned. The law is amply settled to the effect that a suit for injunction cannot be converted into a title suit. The onus to prove her rights qua the suit property, as claimed against the Defendants herein, is upon the Plaintiff, she being the *dominus litas* of her suit, cannot be imposed with the applicant as a defendant especially when no relief has been sought against him. To assert his own rights, given the background of the present suit, the recourse to file an independent suit has anyways been open to him.

Accordingly, the application under Order 1 Rule 10 CPC stands dismissed.”

I have heard learned Counsel for the parties.



9. Ms. Anshoo Saxena, learned Counsel for Respondent 1, i.e. Sangeeta, the plaintiff in the suit, defends the impugned order on the ground that, her client had not, in her suit, claimed any right to title or possession over the suit property and that the suit was a simplicitor suit for injunction. In such a situation, she submits Rambir had no right to be impleaded as a party in the proceedings. She also submits that Sangeeta never sought any relief against Rambir. She also seeks to points out that Rambir has, in fact, subsequently instituted a separate suit, in which he seeks possessory title over the suit property to the exclusion of Sangeeta. That, according to Ms. Saxena, was the appropriate remedy for Rambir to have. The attempt of Rambir to implead himself in the suit filed by Sangeeta against Respondents 2 to 8 was, in her submission, completely misconceived and was rightly rejected by the learned Civil Judge.

10. The principles governing Order I Rule 10 of the CPC are trite and well settled. Any person, whose presence is necessary to determine the real issue in controversy between the parties, is required to be made a party and, if he is not made a party and he seeks impleadment, should be permitted to be impleaded.

11. Ms. Khan, learned Counsel for the petitioner submits that this principle is, in fact, an exception to the *dominus litis* doctrine which has been pressed into service by the learned Civil Judge in arriving at the said decision. She cites in this context *Mumbai International*

***Airport Pvt. Ltd. v. Regency Convention Centre and Hotels Pvt. Ltd.*¹**

and refers me in this context, to paras 13 to 15 of the report which read thus:

“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.

¹ (2010) 7 SCC 417



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 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.”

12. Order I Rule 10(2) of the CPC, which alone is relevant, reads thus:

“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.”

13. A bare reading of Order I Rule 10(2) reveals that all persons “whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle *all the issue questions involved in the suit* may be added as parties.” The application of this principle, in my considered opinion, cannot be



constructed by a mere reading of the prayer advanced in the suit or the relief claimed therein. If that relief is predicated on certain factual assertions and asseverations, which, therefore, fall for adjudication before the Court, all parties, whose presence may be necessary in order to adjudicate on such assertions and asseverations, are entitled to be impleaded as parties.

14. While it is true that the plaintiff, as *dominus litis*, may at the first instance implead those parties whom she, or he, deems to be necessary and proper parties to the *lis*, and if a party not so impleaded seeks impleadment in the proceedings, the right of such party to be impleaded would have to be adjudged on the anvil of Order I Rule 10(2).

15. In para 15 of the report in *Mumbai International Airport Pvt. Ltd¹*, the Supreme Court has adverted to the concepts of “necessary party” and “proper party”. A “necessary party”, according to the Supreme Court, is a person who ought to have been joined as a party and in whose absence no effective decree could at all be passed by the Court. A “proper party”, on the other hand, would include parties whose presence, even if they are not necessary parties, is necessary, “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. It is only if a person is neither a necessary nor a proper party that his application for impleadment can be rejected.



16. The emphasised portion of the judgment of the Supreme Court in *Mumbai International Airport Pvt. Ltd.*¹ effectively answers Ms. Saxena's contention that, as no relief was claimed against Rambir, he was not required to be impleaded as a party in the proceedings. It is not parties against whom reliefs are claimed in the proceedings who alone are entitled to be joined. Any party whose presence would enable the Court – as contradistinguished from a party whose presence is necessary – to adjudicate upon all matters in dispute in the suit, are entitled to be impleaded even if there is no relief claimed against such party.

17. The plaintiff has consciously made detailed averments in the suit regarding her right over the suit property both as an owner of the suit property as well as a person having been in settled possession thereof. She has also set out, *in extenso*, the facts which entitled her to claim ownership. In such circumstances, a third party such as Rambir, who also claimed ownership of the suit property, and has sought to back up the claim with necessary factual assertions in his application under Order I Rule 10, could not have been non-suited by the learned Trial Court. As to whether the claim of Rambir, or that of Sangeeta, apropos ownership and possession of the suit property would prevail, is something which the Court would be able to decide only after a trial and after consideration of evidence.

18. As such, I am of the opinion that the learned Civil Judge materially erred in exercise of her jurisdiction, in rejecting the petitioner Rambir's application under Order I Rule 10 on the sole



ground that Sangeeta's suit was merely a suit for injunction and that an injunction suit could not be converted under into a title suit. What the learned Civil Judge failed to notice was that, even if the claim was for injunction, it was predicated on a clear assertion of ownership and title over the suit property.

19. The right of Rambir to independently file a suit to assert ownership and title, and the fact that he may have filed such a suit, cannot be a ground to disentitle him from being impleaded in the proceedings in CS 52353/2016 pending before the learned Civil Judge.

20. For the aforesaid reasons, I am of the opinion that the learned Civil Judge was not justified in rejecting the petitioner's application under Order I Rule 10. On the basis of the averments contained in the application, the application was required to be allowed.

21. Accordingly, the petitioner's application under Order I Rule 10 is allowed. The impugned order dated 13th February, 2019, to the extent it rejects the petitioner's application under Order I Rule 10 of the CPC is quashed and set aside. The petitioner's application under Order I Rule 10 of the CPC is allowed. The petitioner is permitted to be impleaded as a party. The respondent/plaintiff is directed to file an amended memo of parties including the petitioner as an additional defendant in the suit within a period of one week from today.



22. The petition stands allowed to the aforesaid extent with no orders as to costs.

C. HARI SHANKAR, J

MARCH 31, 2022/kr

