



2025:DHC:10093



\$~

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

%

*Judgment reserved on: 11.11.2025**Judgment pronounced on: 17.11.2025*

+

CM(M) 220/2023, CM APPL. 74752/2024 & CM APPL. 6608/2023

VIJENDER TANWAR

.....Petitioner

Through: Mr. Arvind Varma, Sr. Advocate with
Mr. Shashi Pratap Singh, Ms.
Mahima Chauhan, Ms. Anamika
Tyagi and Ms. Sneha, Advocates.

versus

GIRWAR (NOW DECEASED) THROUGH AGENT/LEGAL
REPRESENTATIVE ANAND TYAGI & ANR.Respondents

Through: Mr. Raman Kapur, Sr. Advocate with
Mr. Varun Kapur, Advocate for R-1.
Mr. Rajive Bhalla, Sr. Advocate with
Mr. R.S. Verma and Mr. Divyansh
Misra, Advocates for R-2.

CORAM:**HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T**

1. Petitioner, a stranger to the injunction suit has filed this petition under Article 227 of the Constitution of India to assail order dated 15.11.2022 of the learned trial court, whereby application of the petitioner for being impleaded as a party under Order I Rule 10 CPC in the subject suit pending since the year 1992 was dismissed. The present respondent no.1 is the legal



2025:DHC:10093



representative of the now deceased plaintiff while the present respondent no.2 is the defendant of the subject suit. I have heard learned senior counsel appearing on behalf of each of the parties.

2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 In the year 1992, the plaintiff (*predecessor of the present respondent no.1*) filed a suit for permanent injunction, seeking to restrain the defendant (*the present respondent no.2*) from dispossessing him or interfering in his peaceful possession with respect to land in *khasra* No.284 (0-8) and 285/2-3-4 (2-0), admeasuring total two *bigahs* eight *biswas* situated in the Revenue Estate of Chhattarpur, Delhi (*hereinafter referred to as "the subject property"*), pleading that he is in actual physical cultivatory possession of the subject property since prior to 1947 as non occupancy tenant under the muslim owners thereof, who had migrated to Pakistan during partition of the country; that after partition of the country, the Central Government took over management and control over the subject property and allegedly allotted the same to one Jaswant Singh, who started claiming himself to be the owner; that subsequently, Jaswant Singh allegedly sold the subject property to one Om Prakash, though the plaintiff remained in cultivatory possession thereof and the said allottee or the purchaser never came forward to take possession of the subject property; that in the month of September 1992, plaintiff came to know that in the revenue records, the subject property was recorded illegally in possession of its owner, and name of the



defendant also appeared recorded in the documents as co-owner; that possession of the subject property was never taken over by the defendant and the same remains in continuous possession of the plaintiff, but on the basis of those false entries, the defendant had started claiming possession over the subject property and threatened to demolish the boundary wall, which required to be restrained.

2.2 In the above backdrop, the applicant (*the present petitioner*), a stranger to the subject suit filed an application seeking his impleadment in the suit under Order I Rule 10 CPC, pleading as follows. The defendant Smt. Padma Mehant had sold the subject property by way of registered General Power of Attorney and Will dated 31.03.1993, followed by an unregistered Agreement to Sell, Affidavit and Receipt all dated 28.05.1993 in favour of one P.D. Aggarwal, who thereafter sold the subject property to the applicant by way of unregistered General Power of Attorney, Will, Agreement to Sell, Affidavit, Indemnity Bond, Receipt and Possession Letter dated 06.08.2010, thereby making the applicant owner of the subject property. On the basis of documents obtained under the Right to Information Act, he came to know that one Anand Tyagi (*the present respondent no.1/LR of plaintiff*) had filed the present suit on the basis of fabricated registered Will dated 30.01.1997, claiming himself to be the solitary legal representative of the original plaintiff, so the applicant lodged a written complaint with the local police of PS Mehrauli vide DD No.48B dated 04.08.2018. On these allegations, the applicant (*the present petitioner*) sought his impleadment as a party in the subject suit.



2.3 The plaintiff before the trial court opposed the impleadment application on the ground that since the subject suit is a suit for injunction *simplicitor*, there being no dispute in the suit as regards title or ownership of the subject property, the applicant is not a necessary party. It was also contended that similar impleadment application filed earlier by P.D. Aggarwal, the alleged predecessor-in-interest of the applicant already stood dismissed vide order dated 02.08.2016, so the impleadment application of the successor-in-interest cannot be allowed. It was also argued that the documents relied upon by the applicant being the unregistered General Power of Attorney and other documents, no right has accrued in favour of the applicant.

2.4 After hearing both sides, learned trial court dismissed the impleadment application of the applicant by way of the impugned order. The learned trial court observed that the impleadment application was completely silent as regards the source of knowledge of the applicant regarding pendency of the subject suit; and that according to the applicant, he acquired ownership and possession over the subject property on 06.08.2010, but filed the impleadment application only on 16.08.2018, which creates suspicion that the applicant was watching the proceedings and filed the impleadment application after inordinate delay. The learned trial court also held that since the applicant claimed his right through P.D. Aggarwal, whose impleadment application already stood dismissed, the present application of the applicant cannot be at the better footing. The learned trial court further held that since the suit is for relief of injunction



simplicitor, involving no issue as regards ownership over the subject property, the plaintiff being *dominus litis* cannot be compelled to sue the applicant and therefore, the applicant is not a necessary party and his presence is not required to decide the subject suit.

2.5 Hence the present petition.

3. During final arguments before this court, learned senior counsel for petitioner/applicant contended that the impugned order is not sustainable in the eyes of law. It was argued that since the applicant also claims to be owner in possession of the subject property, he is a necessary party to the suit and the impleadment ought to have been allowed. Learned senior counsel took me through order dated 12.10.2022 of a coordinate bench of this court in CM(M) 202/2021, which petition had been filed by the present petitioner earlier to assail dismissal of similar application of the applicant under Order I Rule 10 CPC in the same suit; and by way of order dated 12.10.2022, the coordinate bench of this court took a view that dismissal of earlier impleadment application of P.D. Aggarwal was inconsequential because the present petitioner was not a party at that time and the trial court ought to have recorded reasons for rejecting the application of the present petitioner; taking that view, the coordinate bench set aside the earlier dismissal of impleadment application of the present petitioner and remanded the matter for fresh decision. Based on the said order dated 12.10.2022, learned senior counsel for petitioner/applicant argued that the impugned order is not sustainable.



2025:DHC:10093



4. Per contra, learned senior counsel for respondent no.1/LR of plaintiff argued that since the plaintiff denied having engaged in any transaction related to the subject property with any stranger, the applicant's claim of ownership is false. In this regard, learned senior counsel for respondent no.1 referred to order dated 02.08.2016 of the trial court whereby the impleadment application of P.D. Aggarwal was dismissed, holding that P.D. Aggarwal, claiming ownership over the subject property had no stake in the present suit for permanent injunction, in which the limited issue to be decided is as to whether the plaintiff is in possession of the subject property and is entitled to the relief of injunction, which is personal in nature; the learned trial court after detailed discussion in order dated 02.08.2016, dismissed the impleadment application of P.D. Aggarwal. Learned senior counsel for respondent no.1 argued that the petitioner remained a silent spectator for eight years and has now come up for impleadment when the suit is at the stage of final arguments. It was also argued by learned senior counsel for respondent no.1 that in reply to the application under Order I Rule 10 CPC, the present defendant categorically pleaded that P.D. Aggarwal had/has no right, title or interest in the subject property and the alleged documents of transfer of title are false and fabricated as the defendant (*respondent no.2 herein*) never executed any such document in favour of P.D. Aggarwal. Learned senior counsel for respondent no.1 argued that going by that stand, the petitioner/applicant has no case at all to be impleaded as a party in the subject suit.



5. Learned senior counsel for respondent no.2/defendant also opposed the impleadment of the petitioner, contending that since the petitioner claims title over the subject property from P.D. Aggarwal, he cannot get a better title and till date neither the petitioner nor P.D. Aggarwal has filed independent suit claiming ownership over the subject property, which shows their *malafide* and that in itself disentitles them any relief in view of scope of Article 227 of the Constitution of India.

6. In rebuttal arguments, learned senior counsel for petitioner again pointed out that vide order dated 12.10.2022, the coordinate bench of this court had taken a clear view that the issue must be decided without making any reference to P.D. Aggarwal.

7. At this stage, it would be apposite to briefly traverse through the relevant legal position.

8. 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 to the *lis* has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to an exception laid down under Order I Rule 10(2) CPC, whereby a Court may at any stage of the proceedings, 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 a plaintiff or defendant but not so added; and/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. Thus, what is to be seen is as to whether the person sought to be added as a party is necessary and/or proper party for the particular suit.

8.1 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. Two tests are to be satisfied for determining the question as to who is the necessary party and these tests are – (a) there must a right to some relief against such party in respect of the controversies involved in the proceedings, and (b) no effective decree can be passed in the absence of such party.

8.2 A “proper party” is one whose presence is necessary for effective and complete adjudication of all the questions involved in the suit. 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 found not to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. Merely the fact that a person is likely to secure a right/interest in the 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.

8.3 In the case of ***Kasturi vs Iyyamperumal***, (2005) 6 SCC 733, the Hon'ble Supreme Court observed thus:

“13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and 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 said persons.

16. That apart, from a plain reading of an expression used in sub-rule (2) Order I Rule 10 CPC “all the questions involved in the suit” it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the Court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff-appellant on one hand and respondents 2 and 3 and respondents 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into.”

(emphasis supplied)

8.4 In the case of ***Mumbai International Airport Pvt. Ltd. vs Regency Convention Centre and Hotels Pvt. Ltd.***, (2010) 7 SCC 417, the Hon'ble Supreme Court held that Order I Rule 10(2) CPC is not about right of a stranger to be impleaded, but about the judicial discretion of the Court to strike out or add parties and the Hon'ble Supreme Court laid down certain



illustrations regarding exercise of discretion under the said provision thus:

“24.1 If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the Court may implead him having regard to the provisions of Rules 9 and 10(2) of Order I. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismissed the suit for non-joinder of a necessary party. ...

*24.4 If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides etc., the Court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and Court finds him to be a proper party, the Court may direct his addition as a defendant; **but if the Court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party**, if it does not want to widen the scope of the specific performance suit; or the Court may direct such applicant to be impleaded as a proper party either unconditionally or subject to terms. ...”*

(emphasis supplied)

8.5 While examining the scope of impleadment applications filed by strangers to the suits, one can also refer to the judgment of the Supreme Court in the case of **J.J. Lal Pvt. Ltd. vs M.R. Murali**, AIR 2002 SC 1061, where it was held that in a simple suit for eviction between the landlord and the tenant, an application under Order I Rule 10 CPC filed by strangers to the suit claiming title to the suit property cannot be allowed because that would change the complexion of the suit and raise controversies beyond the scope of the litigation. The Supreme Court further held that any decision in the subject suit for ejection would bind only the parties therein and the impleadment applicants are free to establish their claim and title, whatever it may be, in an independent proceedings before a competent forum, so applicants claiming to be owners in title cannot be permitted to come on



record. Similarly, in the case of *Rajni vs Ashok Kumar Gupta*, CM APPL.20596/2015 in RC.REV.332/2013, decided on 22.09.2015 by a coordinate bench of this court, similar application was dismissed with heavy cost, holding that if at all there is any dispute between the applicant of Order I Rule 10 CPC and the landlord *qua* the suit property, it has to be got settled by an appropriate forum by bringing an independent suit to that effect and the same cannot be done in the eviction proceedings as that would convert the eviction proceedings into a title suit.

9. Falling back to the present case, in his subject suit, the predecessor of the present respondent no.1 claimed himself to be in possession of the subject property and expressed apprehension that the present respondent no.2 would dispossess him or interfere in his possession over the subject property. The present petitioner filed an application seeking impleadment as a party in the subject suit, claiming himself to be title holder over the subject property on the basis of unregistered Agreement to Sell and attendant documents. In view of nature of the present dispute and its scope, I would refrain from making any observation as regards legality of ownership claim of the petitioner on the basis of unregistered documents.

10. What is to be seen is as to whether in the above backdrop, the petitioner would be a necessary or at least proper party to the subject suit. The claim of the present respondent no.1 is that he is in possession of the subject property and deserves protection of his possession from the acts of the present respondent no.2. It cannot be said that the subject suit cannot be



decided without impleading the petitioner, because there is no apprehension alleged by the original plaintiff or even by the present respondent no.1 against him. The present suit is based only on possession and not on ownership. The petitioner is not a person against whom the respondent no.1 wishes to make any claim through the subject suit. In case the present respondent no.1 is able to prove during trial his possession over the subject property, the consequence would be restraining the present respondent no.2 from interfering with possession of the present respondent no.1 without following due process of law; and in case the present respondent no.1 fails to prove during trial his possession over the subject property, the consequence would be failure of the suit. In both situations, the present petitioner is not required because the present respondent no.1 has no apprehension against the petitioner, which would be required to be dealt with. On the basis of the above described legal and factual matrix, I have no hesitation to hold that petitioner is certainly not a necessary part to the subject suit.

11. Then comes the question as to whether the petitioner is a proper party to the suit. To reiterate, the questions to be answered in the subject suit are as to whether respondent no.1 is in possession of the subject property and as to whether he reasonably apprehends illegal interference with his possession over the subject property by respondent no.2. Ownership over the subject property is not one of the questions to be settled in the subject suit. It is the questions *involved in the suit* which are the requisite test to decide as to whether presence of the stranger would enable the court to effectively and completely adjudicate upon. It is the controversies *involved in the suit* which



are the test and not the controversies involved between the stranger and either of the parties to the suit. In the present case, the controversy involved is not as to whether the subject property is owned and/or possessed by the petitioner. The controversy in the present case is as to whether respondent no.1 is in possession of the subject property or not. Therefore, to my mind the petitioner is not even a proper party to the subject suit.

12. In case the petitioner, on the basis of his claim of ownership and possession over the subject property is impleaded in the subject suit, scope of the suit would get widened and introduce fresh questions as to whether petitioner is in possession of the subject property and as to whether the petitioner is owner of the subject property and if so, consequence thereof *qua* the respondents (*parties to the subject suit*). That way, what is as on date an injunction suit would become title suit and complicate the issues. Such change in nature of the subject suit cannot be allowed, therefore, the petitioner cannot be impleaded as a party in the subject suit.

13. Further, I have examined the order dated 12.10.2022 of the coordinate bench in CM(M) 202/2021. That petition dealt with challenge to the earlier order of the trial court, whereby application of the present petitioner under Order I Rule 10 CPC had been dismissed. The coordinate bench set aside that order of the trial court because it was solely based on dismissal of similar impleadment application of P.D. Aggarwal. It is in this context that the coordinate bench remanded the matter for fresh decision, because on the application of P.D. Aggarwal, the present petitioner was not even heard. The



coordinate bench did not hold that dismissal of the application of P.D. Aggarwal would be inconsequential. In my considered view, since the present petitioner claims right, title and interest (*whatever be its legal sanctity*) through P.D. Aggarwal only and there is a final judicial decision that P.D. Aggarwal is not a necessary or proper party, that decision cannot be ignored.

14. Another vital aspect is that as mentioned above, the petitioner, going by his case, acquired ownership and possession over the subject property on 06.08.2010, but he filed the impleadment application after eight years on 16.08.2018, by which time the subject suit had reached the stage of final arguments. The Hon'ble Supreme Court in the case of **Anokhe Lal vs Radha Mohan Bansal**, (1996) 6 SCC 730, gave a word of caution as follows:

"5. The Court should have been very circumspect in dealing with the application of a third party seeking leave to become party in the suit, when the plaintiff, who is the dominus litis of the suit, is opposed to it. If the consequence of such addition would involve a de novo trial, the Court should normally have disallowed the application. Way back in 1931 the Privy Council did not allow an application for impleadment on the ground that such a course might throw open a de novo trial of the suit, even after noticing that the party sought to be impleaded was not merely a proper party but a necessary party in the suit. (Naba Kumar Hazra v. Radhashyam Mahish)"

On this aspect, I also find substance in the submission of learned counsel for respondents and the view taken by the learned trial court that the petitioner was surreptitiously watching the suit proceedings and came up to throw spanner when the suit got ripened for decision.



2025:DHC:10093



15. In view of the aforesaid, I am unable to find any infirmity, much less perversity in the impugned order that could call for intervention under Article 227 of the Constitution of India. Therefore, the impugned order is upheld and the petition as well as the accompanying applications are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

NOVEMBER 17, 2025/ry