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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 14.11.2025*+ **CM(M) 2179/2025, CM APPL. 71122/2025 & 71121/2025**

NAZRA KHATOON

.....Petitioner

Through: Ms. Roopa Nagpal, Advocate.

versus

MOHD. ZAFAR & ORS.

.....Respondents

Through: None.

CORAM: JUSTICE GIRISH KATHPALIA**ORDER (ORAL)**

1. Petitioner/plaintiff has assailed order dated 10.09.2025 of the learned trial court, whereby her application under Order I Rule 10 CPC in order to implead a stranger as a party in the partition suit was dismissed by the learned trial court. Having heard learned counsel for petitioner/plaintiff, I do not find it a fit case to even issue notice.

2. Broadly speaking, the petitioner/plaintiff filed a suit for partition and permanent injunction pertaining to the estate left behind by late Ms. Sahiba, predecessor-in-interest of the petitioner/plaintiff and the defendants. During pendency of the suit, the petitioner/plaintiff filed an application under Order I Rule 10 CPC seeking to implead a stranger, Toheed, as defendant no.6 in the suit. The petitioner/plaintiff claimed that on 18.09.2024, she came to



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know that Toheed had forcibly taken possession of the subject property, claiming to have purchased the same from defendant no.1. After some altercation with Toheed, the petitioner/plaintiff also lodged a complaint with the local police. With this backdrop, the petitioner/plaintiff claimed that Toheed is a necessary party to the suit.

2.1 In response to the application under Order I Rule 10 CPC, the proposed defendant Toheed pleaded that during her lifetime Sahiba had sold the subject property to defendant no.2 against consideration and had handed over vacant possession to latter on 17.07.1999, after which the defendant no.2 sold away the property to Toheed on 10.07.2024, against consideration, and handed over possession of the subject property to Toheed. The proposed defendant Toheed also pleaded in reply to the application that the suit for partition is not even maintainable.

2.2 After hearing both sides, learned trial court, placing reliance on a judgment of the Supreme Court, arrived at a decision that Toheed had no connection with the suit and therefore is neither necessary nor proper party because the suit was filed for partition only. Further, the learned trial court observed that the Agreement to Sell and attendant documents, whereby Toheed claimed to have purchased the subject property, are not valid documents of transfer of title, so Toheed is not a necessary party.

3. The only contention raised by learned counsel for petitioner/plaintiff is that, according to settled legal position, any person who is a necessary



party has to be impleaded in the suit by invoking jurisdiction under Order I Rule 10 CPC.

4. 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. 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. 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. Proper party is one whose presence is necessary for effective and complete adjudication of all the questions involved in the suit.

5. In the case of *S.N. Arora vs Brokers & Brokers Pvt. Ltd.*, FAO 217/08 decided on 13.08.2010 by a Division Bench of this Court, after detailed discussion of various judicial pronouncements on this issue, it was held that a person can be impleaded in a suit only if he/she has a direct



interest, in contradistinction to a commercial interest in the pending *lis*. It was further held that where impleadment of a stranger under Order I Rule 10 CPC would enlarge the scope of the litigation, such person should not be impleaded.

6. In the case of ***J.J. Lal Pvt. Ltd. vs M.R. Murali***, AIR 2002 SC 1061, the Supreme Court held that in a simple suit for eviction between the landlord and the tenant, stranger claiming title over the suit property cannot be allowed to be impleaded because that would change the complexion of the suit and raise controversies beyond the scope of the litigation, so such stranger shall be at liberty to establish his claim and title in an independent proceedings before a competent forum.

7. 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. 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)

9. In the present case, the subject suit is a suit for partition, in which the petitioner/plaintiff and the defendants of the suit claim share in the subject



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property left behind by their predecessor-in-interest. It cannot be said that in the absence of Toheed, the suit cannot be effectively decided. On the contrary, if Toheed is made a party to the suit, it would widen the scope of the suit from a simple partition suit to a title suit and as mentioned above, where addition of a party would lead to widening the scope of the suit, the impleadment has to be denied.

10. Therefore, I am unable to find any infirmity in the impugned order, and the same is upheld. The petition and the accompanying applications are dismissed with cost of Rs.10,000/-, to be deposited by petitioner/plaintiff with DHCLSC within one week.

**GIRISH KATHPALIA
(JUDGE)**

NOVEMBER 14, 2025/ry