



2026:DHC:5464



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 06.07.2026+ CS(OS) 234/2020

NAWABUDDIN

.....Plaintiff

Through: Mr. M.S. Khan, Mr. Akbar Kaleem
and Ms. Shaziya, Advs.

versus

SALAHUDDIN & ANR.

.....Defendants

Through: Mr. Abhijit Mishra, Ms. Payal Bahl,
Mr. Himanshu Tomar, Mr. Vikhyat
Gupta, Mr. Prashant Jaiswal and Mr.
Ram Parvesh Kumar, Advs. for
appellant / Ms. Sheeba in O.A.-
161/2026.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)****O.A. 161/2026 (seeking setting aside of impugned order dated 21.05.2026
passed in IA No.37779/2024)**

1. The present appeal has been filed by one Ms. Sheeba under the provision of Chapter III Rule 5 of the Delhi High Court (Original Side) Rules, 2018, assailing an order dated 21.05.2026 passed by the learned Judicial Registrar in I.A. No. 37779 of 2024.
2. By way of the said order, the application of the appellant under Order I Rule 10, CPC for impleadment in the present suit [CS(OS) 234/2020] has been dismissed.
3. The primary contentions raised by the appellant are :
 - (i) that the impugned order is non-speaking;



- (ii) that the prayer clause in CS(OS) 234/2020 has not been duly considered in the impugned order;
- (iii) that the appellant's claim of being in possession of the suit property has not been appreciated.

4. The impugned order reads as under:

I.A. 37779/2024 (u/O I Rule 10 r/w Sec. 21 CPC filed by Intervenor)

The present suit has been filed by the plaintiff against the defendant for partition, separate possession and injunction.

The present application has been filed by the applicant to become party to the present suit submitting that she is in possession of the suit property. The Applicant further states that she has also filed a civil suit bearing no. 822/2025 Sheeba vs. Union of India seeking declaration and injunction with respect to the suit property.

It is nowhere the case of the applicant /intervenor that she is one of the legal heirs of the person who owned the suit property and that her presence is necessary for the grant of relief of partition amongst the stake holders. The Applicant/Intervenor has already instituted the aforesaid suit before the Civil Court in her independent right which has nothing to do in the present case, having been filed by the plaintiff against the defendants qua partition. In view of nature of the case and the facts and circumstances, the applicant is neither necessary nor a proforma party in the present case. The application lacking merits is hereby dismissed.

I.A. stands disposed off.

Be fixed for further proceedings on 25.09.2026.

5. It is evident from the perusal of the impugned order that the learned Registrar duly noted the contention of the appellant as regards her alleged



possession of the suit property and that the appellant has also filed a civil suit bearing no.822/2025, seeking declaration and injunction in respect thereof.

6. The said order further notes as under:

- (i) that the appellant is admittedly not a legal heir of the original owner of the suit property;
- (ii) that the present suit is one for partition inter se the legal heirs of the original owners;
- (iii) that the presence of the appellant is not necessary for adjudication of the relief of partition amongst the stakeholders; and
- (iv) that the appellant's independent claims are the subject matter of the civil suit bearing no.822/2025.

7. It is after noting the aforesaid facts, that the learned Registrar deemed it fit not to implead the appellant (applicant before the learned Registrar) .

8. I find no infirmity in the view taken by the learned Registrar. In view of the factual position taken note of by the learned Registrar, it cannot be held that the impugned order is unreasoned. Further, it is rightly noted that the relief sought in the present suit pertains exclusively to partition amongst the legal heirs and impleadment of a rank outsider claiming independent rights is neither warranted nor necessary.

9. A Coordinate Bench of this Court, in **Nazra Khatoon v. Mohd. Zafar & Ors.**: 2025 DHC 10008, in a similar conspectus, held as under:

“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)



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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 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. During the course of hearing, it also transpires that in the civil suit filed by the appellant (bearing no.822/2025), interim injunction was initially granted but subsequently vacated upon consideration of the relevant facts and circumstances.

11. Needless to say, it is open to the appellant to pursue her independent civil suit, however, the same need not impinge upon the present suit, which is confined to the *inter se* disputes between the legal heirs of the original owners of the property.

12. In the circumstances, no merit is found in the present appeal and the same is accordingly dismissed.

SACHIN DATTA, J

JULY 6, 2026/at/ss