

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 433 of 2016**

Santosh Sharma @ Chhotu Sharma S/o Late Kishan Lal Sharma, Aged About 49 Years R/o House No. 382, Near Water Tank, Samta Colony, Raipur, Tahsil And District Raipur, (Chattisgarh) Plaintiff

---- Petitioner**Versus**

1. Smt. Gulaba Bai Wd/o Late Kishan Lal Sharma, Aged About 80 Years R/o House No. 382, Near Water Tank, Samta Colony, Raipur, Tahsil And District Raipur, (Chattisgarh)
2. Ramesh Sharma, S/o Late Kishan Lal Sharma, Aged About 52 Years R/o Bajrang Lal Panda, Muktidham Road, Durga Chowk, Near Nala, Shanker Nagar, Raipur, Tahsil And District Raipur, (Chattisgarh)
3. Satish Sharma, S/o Late Kishan Lal Sharma, Aged About 45 Years R/o House No. 382, Near Water Tank, Samta Colony, Raipur, Tahsil And District Raipur, (Chattisgarh)
4. Anil Sharma, S/o Late Kishan Lal Sharma, Aged About 40 Years R/o House No. 382, Near Water Tank, Samta Colony, Raipur, Tahsil And District Raipur, (Chattisgarh)
5. Smt. Sumitra Devi, W/o Shri Brijmohan Tiwari, Aged About 60 Years R/o House No. 679, Near Jain Kirana Store, Deepak Colony, New Rajendra Nagar, Raipur, Tahsil And District Raipur, (Chattisgarh)
6. Smt. Vimla Devi, W/o Shri Gopal Sharma, Aged About 55 Years R/o Deepak Nagar, Science College Road, Durg, District Durg, (Chattisgarh)
7. Smt. Chanda Sharma, W/o Shri Permratan Sharma, R/o Hathnipara, Bhatapara, (Chattisgarh)
8. Smt. Anju Sharma, W/o Shri Ramesh Sharma, Aged About 40 Years R/o Muktidham, Shanker Nagar, Police Station Mohan Nagar, Durg, District Durg, (Chattisgarh)
9. Ku. Nikita Sharma, W/o Shri Ramesh Sharma, Aged About 20 Years R/o Muktidham, Shanker Nagar, Police Station Mohan Nagar, Durg, District Durg, (Chattisgarh) Defendants

---- Respondents

For Petitioner : Shri H.B. Agrawal, Senior Advocate with Smt. Meera Jaiswal, Advocate.

For Respondents No. 1 to 7 : Shri Viprasen Agrawal, Advocate.

For Respondents No. 8 & 9 : Shri Jitendra Gupta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

06/12/2016

(1) The trial Court by its impugned order dated 30.04.2016 allowed the application under Order 1 Rule 10 CPC filed by respondents No. 8 & 9 directing impleadment of wife & daughter of defendant No. 2/respondent No. 2, against which this writ petition under Article 227 of the Constitution of India has been filed.

(2) Learned counsel appearing for the petitioner would submit that respondents No. 8 & 9 are only wife & daughter of defendant No. 2 and, as such, they have no right, title and interest in the suit property; and husband of respondent No. 8 and father of respondent No. 9 is already on record as defendant No. 2 and, as such, neither they are necessary party nor proper party.

(3) On the other hand, counsel for the respondents would support the order impugned.

(4) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(5) It is well settled law that that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wish to litigate and cannot be compelled to sue 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 and the Court, in exercise of his discretionary powers, is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

(6) Thus, it is transparently clear that necessary party is one without whom no effective decree can be made and proper party is one in whose absence, an effective decree can be passed, but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

(7) The Supreme Court in case of **Mumbai International Airport Pvt. Ltd.**

v. Regency Convention Centre & Hotels Pvt. Ltd. & Ors.¹ considering a plea as to whether the appellant is necessary or proper party to a suit for Specific Performance, has held as under:--

"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 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 provisions 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) party 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.

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, 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."

1 2010 (7) SCC 417

(8) Further, in the case of **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay & others**², their Lordships of the Supreme Court has held that a person to be joined, he must have a direct or legal interest in the action. In other words, he must show that the litigation may lead to a result which would affect him legally by interfering or adversely affecting his legal right or legally protected interest. Relevant paragraph of the report states as under:--

"It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may have incidentally have that effect. But that appeared to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary (sic) is not merely that he has relevant evidence to give on some of the questions involved; that would only make him, a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e. he can say that the litigation may lead to a result which will affect him legally, that is, by curtailing his legal right. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action."

(9) It is relevant to mention here that the primary object of Order 1 Rule [10\(2\)](#) of the Code of Civil Procedure is to bring before the Court at one and the same time all the persons interested in the dispute so that all the controversies in the suit may be finally determined once and for all in the presence of the parties without delay, inconvenience and expenses of several actions, trials and inconclusive adjudication. Notwithstanding the fact that the said provision confers wide discretion but such discretion has to be exercised judicially and on sound legal principle. The said power can be

2 1992 (2) SCC 524

exercised on either of the two grounds:--

"(a) Such person ought to have been joined, either as a plaintiff or as a defendant, but is not so joined; or

(b) Without his presence, the question involved in the suit cannot be decided finally and effectively."

(10) Very recently, in the matter of **Vidur Impex and Traders Private Limited and others Vs. Tosh Apartment Private Limited**³, Their Lordships of the Supreme Court has considered the its earlier decision on the point and laid down the principles governing disposal of an application for impleadment as under: -

"(41) Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

(41.1) The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

(41.2) A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

(41.3) A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

(41.4) If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his im-

3 (2012) 8 SCC 384

pleadment against the wishes of the plaintiff.

(41.5) In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

(41.6) However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.”

(11) The Supreme Court in the matter of **Balaram Vs. P. Chellanthangan & others**⁴ has reiterated the same view as taken earlier by their Lordships of the Supreme Court in the above referred case.

(12) In light of the principles laid down by the Supreme Court in the above referred cases, if the facts of the present case are examined, it is quite vivid that in the facts & circumstances of the case, the trial Court has committed jurisdictional illegality in allowing the application for impleadment and the proposed defendants No. 8 & 9 do not appear to be proper or necessary party and their interest is duly represented by defendant No. 2 and, therefore, the order impugned deserves to be and is hereby dismissed.

(13) Accordingly, the writ petition is allowed to the extent indicated above.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-