

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 926 of 2015****Order reserved on 08.11.2016****Order passed on : 02.12.2016**

M. A. Wasim S/o Late Janab M. A. Alim, Aged About 57 Years R/o H.
 No. 61, Salhewarpara, Sadar Uttar Ward, Anjuman School Street,
 Dhamtari, Civil Revenue Distt. & Distt. Dhamtari (Chhattisgarh).
Applicant/ (Proposed Plaintiff)

---- Petitioner**Versus**

1. M. A. Fahim S/o Late Janab M. A. Alim, Aged About 59 Years R/o H.
 No. 61, Salhewarpara, Sadar Uttar Ward, Anjuman School Street,
 Dhamtari, Civil Revenue Distt & Distt. Dhamtari (Chhattisgarh)

.....Plaintiff

2. Municipal Corporation-Dhamtari, Through the Commissioner, Municipal
 Corporation Office, Dhamtari, Civil-Revenue Distt & Distt. Dhamtari
 (C.G.)

3. Inder Chand Chopda, Aged about 54 years, S/o Late Ratan Chand
 Chopda, R/o Rambagh, Dhamtari, Civil-Revenue Distt. & Dist. Dhamtari

4. The State of Chhattisgarh, Through the Collector-District Magistrate,
 Dhamtari, Civil-Revenue Distt & Distt. Dhamtari (C.G.)

.....Defendants

---- Respondents

For Petitioner	: Shri J.A. Lohani, Advocate.
For Respondent No. 1	: Shri Adil Minhaj, Advocate.
For Respondent No. 3	: Smt. Astha Shukla, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Order [C.A.V.]**

(1) By way of this petition, the petitioner seeks to challenge the order
 impugned dated 13.10. 2015 passed by Civil Judge, Class-II in Civil Suit
 No.169-A/2013 by which his application under Order 1 Rule 10 CPC has
 been rejected.

(2) Respondent No.1/plaintiff- M.A. Fahim instituted a suit for declaration of his title and permanent injunction on 07.10.2005 stating *inter alia* that he is entitled for declaration of title and permanent injunction restraining the respondents from interfering with his peaceful possession. In the said civil suit, on 1.9.2015, petitioner has filed application under Order 1 Rule 10 of the CPC read with Section 151 of the CPC stating *inter alia* that proposed plaintiff/petitioner & respondent No.1/plaintiff are real brothers and the suit property was purchased by their father Shri M.A. Alim and therefore, petitioner/proposed plaintiff and respondent No.1/plaintiff have equal share in the suit property. He further stated in his application that he was not aware of the pendency of the suit and when he came to know about the pendency of the suit i.e. on 01.08.2015, immediately thereafter on 01.09.2015 he moved an application under Order 1 Rule 10 CPC along with affidavit for impleading him as party as party-plaintiff, which was opposed by respondent No.1 by filing his reply.

(3) The trial Court, by its impugned order dated 13.10.2015 rejected the above application holding that such application has been moved belatedly and the proposed plaintiff is at liberty to file separate suit and he cannot be impleaded as a plaintiff in the suit filed by the respondent No. 1/plaintiff.

(4) Shri J.A. Lohani, learned counsel appearing for the petitioner would submit that petitioner is necessary party in the suit filed by the plaintiff/respondent No.1 and without whose presence no effective decree can be passed by the trial Court and even no relief can be

granted in the suit and, as such, he is necessary/proper party in the suit and, therefore he may be allowed to be substituted in the suit filed by the plaintiff/respondent No.1.

(5) On the other hand, Shri Adil Minhaj, counsel for the respondent No.1/plaintiff supported the order impugned.

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

(7) The question for consideration would be whether the learned trial Court is justified in rejecting the application under Order 1 Rule 10 of the CPC.

(8) It is well settled law that 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 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.

(9) 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.

(10) 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

1 2010 (7) SCC 417

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.”

(11) 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."

(12) 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

2 1992 (2) SCC 524

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 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."

(13) 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

tive 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 impleadment 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.”

(14) The Supreme Court in the matter of **Baluram 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.

(15) 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

4 AIR 2015 SC 1264

has exercised its judicial discretion to reject the application for impleadment and the proposed plaintiff does not appear to be proper or necessary party, this Court would not interfere with the exercise of judicial discretion by the trial Court in exercise of power under Article 227 of the Constitution of India.

(16) Applying its earlier decision in **Surya Dev Rai v. Ram Chander Rai**⁵ and **Shalini Shyam Shetty v. Rajendra Shankar Patil**⁶, the Supreme Court in **Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal**⁷ has held that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. It has also been held that supervisory jurisdiction or certiorari jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice

5 (2003) 6 SCC 675

6 (2010) 8 SCC 329

7 (2013) 9 SCC 374

should occasion.

(17) Having heard learned counsel for the parties and having perused the impugned order, this Court does not find any such illegality or perversity committed by the Court below which would warrant exercise of jurisdiction under Article 227 of the Constitution of India.

(18) Accordingly, the writ petition filed under Article 227 of the Constitution of India deserves to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-