

\$~A-4

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

%

Date of decision: 09.11.2016

+ CM(M) 1083/2016 and CM No. 41807/2016 (stay)

DR K PUGAZHENDI

..... Petitioner

Through

Ms.Ginny J. Rautray, Ms.Parul
Kandoi and Ms.Harsha, Advocates.

versus

AMBUJA BHUSHAN JAISWAL

..... Respondent

Through

Respondent No.1-in-person.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 08.08.2016 by which an application filed by the petitioner under Order 1 Rule 9 CPC was dismissed.
2. The respondent was enrolled for pre-Ph.D/Ph.D Degree programme in the School of Physical Sciences, Jawaharlal Nehru University (JNU), New Delhi on 29.07.2009. He was provided with hostel accommodation. A show cause notice dated 23.09.2014 was issued to the respondent. Finally an order was passed which was said to have been pasted on the respondent's room on 22.10.2014 to vacate the hostel by 27.10.2014. The respondent filed the present suit seeking to set aside the letter dated 11.06.2014 by which an enquiry committee was constituted, to set aside observations made by the said enquiry committee, to set aside the show cause notice dated 23.09.2014, to set aside the eviction order dated 22.10.2014 and 13.12.2014, etc.

Originally the plaint was filed only against the officers of JNU and JNU was not impleaded as a party.

3. An application was filed under Order 1 Rule 10 CPC by the defendants in the suit which was disposed of on 13.05.2016 with a direction to delete the original defendants No. 2 to 7 from the array of parties. However, the petitioner was not deleted from the array of parties.

4. It is in this background that the petitioner has now moved the present application under Order 1 Rule 9 CPC pointing out that JNU is a necessary and a proper party and hence, the present suit may be dismissed for non-joinder of necessary party.

5. The trial court vide impugned order came to a conclusion that without the presence of JNU as a party, the issues arising in the suit cannot be effectively and completely adjudicated upon. It also concluded that JNU is both a necessary and a proper party to the suit. Accordingly, the trial court impleaded JNU as a defendant and granted an opportunity to the respondent to file amended plaint within 14 days. Though not specifically said, the effect of the impugned was the disposal of the application of the petitioner filed under Order 1 Rule 9 CPC.

6. Learned counsel appearing for the petitioner has vehemently argued that under the proviso to Order 1 Rule 9 CPC, a suit is liable to be dismissed for non-joinder of a necessary party. She further submits that Order 1 Rule 10 (2) CPC cannot be applied when a lacuna as noted under the proviso to Order 1 Rule 9 CPC is brought to the notice of the court. She relies upon the judgment of the Division Bench of the Madras High Court in the case of ***T.Panchapakesan (died) & Ors. vs. Peria Thambi Naicker & Ors., AIR 1973 Madras 133*** to support her contention.

7. Order 1 Rule 9 CPC and Order 1 Rule 10 (2) CPC read as follows:-

“9. Mis-joinder and non-joinder.- No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party.”

“10. Suit in name of wrong plaintiff.- (1) xxx

(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.

(3) xxx

(4) xxx

(5) xxx”

8. Order 1 Rule 10 (2) CPC provides that the court at any stage, even without an application of either party add a party whose presence before the court is necessary in order to enable the court to effectually and completely adjudicate upon and the settle all the questions involved in the suit.

9. The submission is that the proviso to Order I Rule 9 CPC curtails/abrogates the above power under Order 1 Rule 10 (2) CPC to implead any party whose presence before the court is necessary. This court in *Arunesh Punetha vs. Boston Scientific Corporation and Ors.*

(**MANU/DE/2980/2005**) held as follows:-

“20...Firstly, it cannot be disputed that mis-joinder of cause of action or parties is not a stated ground per se for rejection of a plaint. Secondly, it cannot in law be treated as a bar to the maintainability of the suit. The purpose of rejecting a plaint is to avoid vexatious, frivolous or a suit which in the eye of law is not maintainable. It is the maintainability of the suit which will be a paramount consideration before the court. While considering such an objection at the threshold of the proceedings, it is obligatory upon the plaintiff to frame a suit so as to afford ground for final decision upon the subjects and disputes and to prevent further litigation.....”

The Division Bench of the Karnataka High Court in ***Subbanna vs. Kamaiah***, ***ILR 1988 KARNATAKA 786***(**MANU/KA/0235/1988**) held as follows:-

“10.6. However, it is necessary to point out that the trial Court, on holding that the sixth respondent being an unmarried daughter on the date of filing of the suit is a necessary party to the suit, ought to have adjourned the suit and directed the plaintiff to implead her instead of dismissing the suit. Rule 9 of Order 1 of C.P.C. specifically provides that no suit shall be defeated by reason of the mis-joinder or non-joinder of parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. A proviso has been added by Central Act 104 of 1976 to the effect that "nothing in this rule shall apply to non-joinder of a necessary party." But sub-rule (2) of Rule 10 of Order 1 C.P.C., empowers the Court to direct the plaintiff to add a person to the suit who ought to have joined whether as plaintiff or defendant whose presence before the Court is necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit. The instant case was admirably the one in which the trial Court ought to have adjourned the suit and directed the plaintiff to implead the

sixth respondent instead of dismissing the suit solely on the ground that respondent-6 has not been impleaded even though all other issues were decided in favour of the plaintiff. In case, even after such a direction the plaintiff had failed to implead the 6th respondent then only the trial Court could have resorted to dismissing the suit for not joining the necessary party. This should have avoided the delay in effecting the partition by metes and bounds and it would have also avoided multiplicity of proceedings.”

10. The legal position that would follow is that mere non-joinder of a necessary party would not mean dismissal of the suit as is sought to be argued. If such an interpretation was to be accepted it would negate the power to implead necessary and proper parties as provided by the CPC in Order I Rule 10(2). Such an interpretation is not possible. It is well settled rule of interpretation that no power of a statute is to be construed as unnecessary or superfluous. Reference may be had to the judgment of the Supreme Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.vs.Ram Gopal Sharma and Ors. AIR 2002 SC 643***).

11. There may, however, arise a situation where on account of the fact that grave prejudice would be caused to one of the parties in case a party is impleaded under Order 1 Rule 10(2) CPC, the court may refuse to implead such a party. In that eventuality proviso to Order 1 Rule 9 CPC would come into play.

12. A reference may be had to the judgment of the Madras High Court relied upon by the petitioner in case of ***T.Panchapakesan (died) & Ors. vs. Peria Thambi Naicker & Ors. (supra)***. In that case the plaintiffs therein had instituted the suit for declaration that they were entitled to certain plots and consequential permanent injunction to restrain the defendants from

interfering with their possession or in the alternative, for partition and separate possession of 18/32 shares. It was discovered that even as per the plaintiffs, three shares remain and the persons interested in those shares had not been made parties to the suit. The court held that the suit being based on an alleged partition which has not been established and in the alternative, the suit for partition, all the persons interested in the properties should have been impleaded as parties. Despite the above position, the trial court had passed a decree declaring the right of the plaintiff to be in joint possession. The Madras High Court held that the trial court erred in granting a decree and dismissed the suit. The suit was dismissed at the appellate stage after all evidence had been completed and the trial court had already passed a decree. It was at that stage that the court was of the view that it would not be proper to implead the necessary and proper party at that stage.

13. In the present facts, it is manifest that the suit is at a preliminary stage. The evidence is yet to start. Hence, there are no reasons to differ with the view taken by the trial court of impleading JNU as a necessary and proper party under Order 1 Rule 10 (2) CPC.

14. In view of the above, the present petition is dismissed. All pending applications also stand dismissed.

JAYANT NATH, J

NOVEMBER 09, 2016/rb