

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.234 of 2017

Mohd. Irshad, S/o Abdul Kayyum, Aged About 45 years, R/o Village & P.S.-Gaurela, Tehsil-Pendra Road, Civil & Revenue District-Bilaspur (CG)

----Petitioner

Versus

1. Mohd. Riyaz, S/o Late Ilyaas, Aged About-45 years,
2. Mohd. Ayaz, S/o Late Ilyaas, Aged About-36 years,
3. Mohd. Ahtayaaz, S/o.Late Ilyaas, Aged about 30 years,
Respondents No.1 to 3 are R/o. Ward No.3, Masjid Road Gaurela, P.S. Gaurela, Tehsil-Pendra Road, Civil & Revenue District-Bilaspur (CG)
4. Enamul Haque S/o. Nurul Haque, Aged About-55 years, R/o. Masjid Road, Ward No.3, Gaurela, Post, P.S.-Gaurela, Tahsil-Pendra Road, Civil & Revenue District-Bilaspur (CG)

---- Respondents

For Petitioner : Mr.Sushobhit Singh, Advocate
For Res.No.1 to 3 : Mr.Ashok Soni, Advocate
For Res.No.4 : Mr.Sarfaz Khan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

26/04/2017

1. Respondents No.1 to 3 herein/plaintiff instituted a suit for ejectment and arrears of rent against respondent No.4/defendant herein. The suit was instituted on 5.4.2010. In course of trial, the plaintiffs/landlords have closed their evidence. Thereafter, on 19.1.2017 the petitioner herein filed an application under Order 1 Rule 10 (2) of the CPC that

he is co-owner of the suit house and therefore, he is necessary party in the said suit. Said application was opposed by the plaintiffs/respondents No.1 to 3. The trial Court by order dated 7.2.2017 rejected the said application. Thereafter, the petitioner repeated application under Order 1 Rule 10(2) of the CPC for impleadment. The trial Court by order dated 1.3.2017 again rejected the same. Challenging both the orders, this writ petition under Article 227 of the Constitution of India has been filed.

2. Mr.Sushobhit Singh, learned counsel for the petitioner, would submit that the proposed applicant/writ petitioner being co-owner of the suit property is not only proper but also necessary party and therefore, he is entitled to be impleaded as party defendant in the suit and therefore, the trial Court is absolutely unjustified in rejecting the application holding that he is neither proper nor necessary party.
3. Mr.Ashok Soni, learned counsel appearing for respondents No.1 to 3, would submit that the petitioner is not co-owner of the suit property and unnecessarily in collusion with defendant No.4 to install the proceeding of suit for eviction the application has been filed for impleadment, which has rightly been rejected by the trial Court and therefore, the writ petition deserves to be dismissed.
4. I have heard learned counsel for the parties, considered their rival submissions made herein and also gone through the record with utmost circumspection.

5. In order to decide the dispute, it would be appropriate to notice Order 1 Rule 10(2) of the CPC which states as under:-

“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.”

6. Rule 10 (2) of Order 1 of the CPC permit the Court to order the name of any of the following two categories persons to be added as party to a suit (a) person “who ought to have been joined” or (b) person “whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate and settle all the questions involved in then suit” and the name of none else can be ordered to be added to the suit, either as plaintiff or as defendant.
7. Person who ought to be joined as party to a suit is the person whose presence is indispensable for granting an effective decree. Such person is a necessary party. Person whose presence may enable the Court to effectually and completely decide and dispose of all the questions involved in the suit is the person “whose presence before the Court may be necessary” and such a person is a proper party.
8. Person having direct interest in the subject-matter of the suit alone can be necessary party or a proper party. Indeed, Court

has no jurisdiction to direct the name of any person to be added to the suit unless it is established that such a person ought to have been joined, or his presence is necessary and settlement of all the questions involved in the suit. To be precise, Court is duty bound to investigate and find out as to whether the person, whose name is sought to be added as a party to the suit, is a proper or necessary party before ordering his impleadment.

9. In a suit where the relief sought is a decree for ejectment of a tenant and the foundation for the relief is landlord tenant relationship between the plaintiff and defendant a person claiming himself to be a co-sharer in the property in question is neither necessary nor a proper party inasmuch as in such a suit the title of ownership of the property is not the subject-matter of the suit in which the co-sharer may have an interest.
10. In **Dhannalal Vs. Kalawantibai**¹ the Supreme Court has held that the plaintiff is *dominus litis* and one co-owner can file a suit for ejectment of the tenant and it is not necessary that all co-owners/landlords must jointly sue for ejectment.
11. Reiterating the principle of law laid down in **Kasthuri Radhakrishnan and others Vs. M. Chinniyan and another**², the Supreme Court has held that in a eviction suit filed by brothers, without joining co-owner (sister) as party,

¹ (2002) 6 SCC 16

² (2016) 3 SCC 296

the suit for eviction is maintainable as sister (co-owner) is not a necessary party.

12. Applying the principle of law enunciated by the Supreme Court to the facts of the present case, it is apparent that present suit is for eviction of the defendant/tenant. The plaintiffs have disputed that the proposed applicant/petitioner is not co-owner of the suit house. In the suit for ejectment, a summery enquiry has to be made whether the plaintiffs are entitled for decree of eviction or not. Thus, in a suit where the relief sought is decree for ejectment of tenant, even if it is assumed that the petitioner is co-owner/co-sharer, he is neither necessary nor proper party in the said suit in view of law laid down by the Supreme Court in the aforesaid judgments, therefore, the trial Court is absolutely justified in rejecting the application for impleadment filed by the petitioner.

13. I do not find any good ground to interfere with the impugned order. The writ petition being devoid of merit is liable to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-