

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.285 of 2016**

Smt. Nivedita Pathak W/o Sanjay Pathak, aged 46 years, R/o Maharshai Valmiki Ward No.30, Ashiyana Phase-II, Madhubhan Grih Nirman Sahakari Society, Raipur, Tahsil and District Raipur (CG)

---- Petitioner

Versus

1. Commissioner, Municipal Corporation, White House, Raipur, Tahsil and District-Raipur (CG)
2. Zone Commissioner/In-Charge Officer, Municipal Corporation, Zone No.3, Shankar Nagar, Raipur (CG)
3. Smt. Jyoti Nathani, W/o Suraj Nathani, aged 50 years, R/o Station Road, Raipur, through its Power of Attorney Holder Ashish Tiwari, S/o Late K.K. Tiwari, R/o Fafadih, Raipur (CG)

---- Respondents

For Petitioner	:	Mr.Malay Shrivastava, Advocate
For Res.No.1 and 2	:	Mr.Arvind Shrivastava, Advocate
For Respondent No.3	:	Mr.Raghvendra Pradhan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/10/2018

1. Taking exception to the impugned order dated 14.3.2016 passed by the 10th Civil Judge, Class-II, Raipur in Civil Suit No.298-A/2015 by which the application filed by proposed defendant/respondent No.3 has been granted by the trial Court finding that she is proper party in the suit, the petitioner/plaintiff has filed this writ petition under Article 227 of the Constitution of India.
2. Mr.Malay Shrivastava, learned counsel for the petitioner/plaintiff, would submit that the trial Court is absolutely unjustified in granting the application for impleadment of respondent No.3 as she is neither necessary party nor proper party in the suit as the suit is for declaration that defendant-Municipal Corporation has no right to interfere in boundary wall and house constructed upon the

said land and the defendants be restrained from interfering with her peaceful possession and have right for demolition. He would strongly rely upon the judgment of the Supreme Court in the matter of **Sarvinder Singh v. Dalip Singh and others**¹.

3. Mr.Raghvendra Pradhan, learned counsel for respondent No.3/proposed defendant, would support the impugned order and submit that the trial Court is absolutely justified in granting that application holding her to be proper party, which has not to be interfered with in exercise of jurisdiction under Article 227 of the Constitution of India.
4. Mr.Arvind Shrivastava, learned counsel for respondents No.1 and 2, would submit that they are formal party and main dispute is between the petitioner/plaintiff and defendant No.3/respondent No.3.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
6. In **Sarvinder Singh** (supra), it was held as under:-

“5.....A necessary party is one whose presence is absolutely necessary and without whose presence the issue cannot effectually and completely be adjudicated upon and decided between the parties. A proper party is one whose presence would be necessary to effectually and completely adjudicate upon the disputes. In either case the respondents cannot be said to be either necessary or proper parties to the suit in which the primary relief was found on the basis of the registered Will executed by the appellant's mother, Smt. Hira Devi. Moreover, admittedly the respondents claimed right, title and interest pursuant to the registered sale deeds said to have been executed by the defendants-heirs of Rajender Kaur on 2-12-1991 and 12-12-1991, pending suit.”

1 (1996) 5 SCC 539

7. Recently, the Supreme Court in the matter of **Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya (deceased) Through Legal Representatives and others**² while considering the question of addition of party under Order 1 Rule 10(2) of the CPC, it was held as under:-

“10. Order 1 Rule 10 of the Code enables the Court to add any person as a party at any stage of the proceedings, if the person whose presence in Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. Order 1 Rule 10 of the Code empowers the Court to substitute a party in the suit who is a wrong person with a right person. If the Court is satisfied that the suit has been instituted through a bona fide mistake, and also that it is necessary for the determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done. When the Court finds that in the absence of the persons sought to be impleaded as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the Court would do justice by impleading such persons. Order 1 Rule 10(2) of the Code gives wide discretion to the Court to deal with such a situation which may result in prejudicing the interests of the affected party if not impleaded in the suit, and where the impleadment of the said party is necessary and vital for the decision of the suit.

17. The expression “to settle all questions involved” used in Order 1 Rule 10 (2) of the Code is susceptible to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject matter thereof. Parliament in its wisdom while framing this rule must be held to have thought that all material questions common to the parties to the suit and to the third parties should be tried once for all. The Court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any dispute that the party impleaded must have a direct interest in the subject matter of litigation. In a suit seeking cancellation of sale deed, as mentioned supra, a person who has purchased the property and whose rights are likely to be affected pursuant to the judgment in the suit is a necessary party, and he has to be added. If such purchaser has expired, his legal representatives are necessary parties.”

2 (2017) 9 SCC 700

- 8.** Reverting to the facts of the present case in the light of principles of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that the trial Court has clearly held that presence of defendant No.3 is necessary for just and proper disposal of suit and she is proper party, as such, the impugned order is purely discretionary order warranting no interference under Article 227 of the Constitution of India.
- 9.** Accordingly, the writ petition being without substance is liable to be and is hereby dismissed. A copy of this order be sent to the trial Court forthwith through the District Judge. No cost(s)

Sd/-

(Sanjay K. Agrawal)

Judge

B/-