

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Art. 227) No. 527 of 2018**

Arun Pandey, S/o Shri Damodar Prasad Pandey, Aged About -46 years,
R/o Near Nutan Chowk, Sarkanda Bilaspur, Police Station – Sarkanda,
Tahsil & District – Bilaspur (C.G.)

---- Petitioner/Plaintif

Versus

- 1.State of Chhattisgarh, Through – the Collector, Bilaspur (C.G.)
(Defendant No.1)
2. Municipal Corporation, Bilaspur, Through – the Commissioner, Municipal Corporation, Bilaspur (C.G.)
(Defendant No. 2)
3. The Additional Tahsildar, Bilaspur (C.G.)
(Defendant No. 3)
4. Gyanchand Pathak, S/o Late Shri Babulal Pathak, Aged about -49 years, R/o Pariwar Kalyan Kendra Office, Main Road Sarkanda, Police Station -Sarkanda, Tahsil & District Bilaspur (C.G.)
(New Party ordered to be impleaded as Defendant No. 4 by the learned court below)

---- Respondents

For Petitioner	:	Mr. Rishi Rahul Soni, Advocate.
For Respondents No. 1 & 3/State	:	Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.
For Respondent No. 2	:	Mr. H.B. Agrawal, Senior Advocate with Mrs. Prabha Sharma, Advocate.
For Respondent No. 4	:	Mr. Arvind Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/07/2019

(1) The petitioner is plaintiff before the trial Court. He calls in question the impugned order dated 14.05.2018 by which application under Order 1 Rule 10(2) of the CPC filed by defendant No. 4/respondent No. 4 namely Gyanchand Pathak has been allowed and

he has been directed to be impleaded as defendant No. 4 in the suit.

(2) Learned counsel appearing for the petitioner would submit that the trial Court is unjustified in directing the impleadment of respondent No. 4 as party defendant No. 4 in the suit.

(3) On the other hand, counsel for respondent No. 4 would support the impugned order.

(4) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(5) The plaintiff filed a suit stating inter alia that he is title and possession holder of the suit land bearing Khasra No. 592/4. Admittedly, part of the suit land, as mentioned in paragraph 4 of the plaint, has been sold by the plaintiff in favour of defendant No. 4 and in view of that the defendant No. 4 has made an application for impleadment in the suit as plaintiff is claiming declaration of title and possession in his favour even after sale in favour of defendant No. 4, which the trial Court has granted holding him to be the necessary party in the suit.

(6) The Supreme Court in the matter of **Mumbai International Airport Private Limited Vs. Regency Convention Center and Hotels Private Limited and others**¹ has considered the law with regard to impleadment of necessary party and held as under:-

“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

1 (2010) 7 SCC 417

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. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a property party to the suit for specific performance.

22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.”

(7) Reverting to the facts of the present case in light of the law laid down down by the Supreme Court in the matter of **Mumbai International Airport Private Limited** (supra), it is quite vivid that case the plaintiff having sold the part of suit property in

favour of defendant No. 4 seeking declaration of title in his favour, in which the defendant No. 4 appeared and sought impleadment, which the trial Court has granted holding him to be the necessary party, in the considered opinion of this Court that the respondent No. 4 can be said to be the proper party as his presence is necessary for just and proper disposal of the suit in view of fact that plaintiff is seeking declaration of title over the suit land after alienating the part of the suit land in favour of defendant No. 4, as such, the trial Court has rightly exercised its judicial discretion in allowing the application filed by respondent No. 4 for his impleament in the suit as defendant No. 4, in which, I do not find any illegality or perversity warranting interference under Article 227 of the Constitution of India.

(8) The writ petition is liable to be and is hereby dismissed leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

