

A.No.5787 of 2019 in C.S.No.437 of 2012

PUSHPA SATHYANARAYANA, J.

The Union of India, which is the plaintiff in the suit, has taken out this application to implead Tamil Nadu Golf Federation as second defendant in the above suit.

2. The suit is filed for recovery of money payable by the first defendant, being the outstanding lease amount to the tune of Rs.7,83,47,074/-. After the pleadings were complete and the parties were in the midst of the trial, the sole defendant has filed an additional written statement. In the said additional written statement, it is alleged that the sole defendant had entered into an agreement with the proposed defendant and they were negotiating for the lease amount. As the plaintiff was not aware of the above facts, the present application is filed to implead the Tamil Nadu Golf Federation as the second defendant in the suit.

3. The first defendant was only supporting the case of the plaintiff for impleading the proposed party as the application itself is taken out based on the averments made in the additional written statement filed belatedly in the year 2019.

4. Mr.P.R.Raman, learned Senior Counsel appearing on behalf of the proposed party vehemently opposed this application contending that this application itself is misconceived, as the presence of the second defendant is not necessary for the purpose of deciding the suit.

5. Heard the learned counsel on either side and perused the materials placed before this Court.

6. As stated earlier, the suit is filed only for recovery of money being the arrears of lease amount payable by the sole defendant, who has been in occupation from 1951. There is absolutely no averment in the plaint that the proposed party is a necessary party. There is also no cause of action pleaded against the proposed party. It is only based on the additional written statement filed by the sole defendant, wherein, it is averred that there is an internal arrangement between the sole defendant with the proposed party, the present application is filed.

7. No doubt, the plaintiff as the *dominus litis* has to choose the opponent. However, the plaintiff has to make out the criteria for impleading any party to be a defendant in the suit. It is not a suit for

eviction and for recovery of possession. It is only a suit for recovery of money from the sole defendant, for the adjudication of which, the presence of the proposed party is not necessary. The adjudication in the suit can be done even in the absence of the proposed party, as any decision that may be taken in the suit will not bind or affect the rights of the proposed party. Though the learned counsel for the applicant pointed out certain communications, which are filed in the typed-set book in support of the application, unless the relevancy is pleaded, the same cannot be looked into, based on which the impleadment can be ordered.

8. In this regard, it is worthwhile to place reliance on the decision of this Court in **Krishnan, S. Vs. Rathinavel Naicker, 2007 (2) CTC 73**, wherein, this Court crystallized the tests to be applied to determine the rights of a party to implead another and the excerpts of those categories would run infra :

"17. In a nut shell, the tests to be applied for determining the right of a party to implead another, in a pending suit or other proceeding, may be crystallized into the following categories:-

- a) If without his presence no effective and complete adjudication could be made;
- b) If his presence is necessary for a complete and effectual adjudication of the dispute though no relief is claimed against him;
- c) If there is a cause of action against him;

d) If the relief sought in the suit or other proceedings is likely to be made binding on him;

e) If the ultimate outcome of the proceedings is likely affect him adversely;

f) If his role is really that of a necessary witness but is sought to be camouflaged as a necessary party;

If a party to a litigation satisfies the court that the person sought to be impleaded, passes any one or more of the above tests, then he is entitled to get the discretion of the court exercised in his favour. The above tests are not exhaustive and at times, even if a person falls under any one of the above categories, the court may refuse to implead him. To quote an example, a subsequent purchaser of a property, which forms the subject matter of the suit, may satisfy the tests (d) and (e) above mentioned and yet the court may decline to implead him on the basis of the doctrine of lis pendens. Therefore the above list is only a broad statement of the principles that could be culled out from judicial precedents."

9. The Hon'ble Apex Court in **Mumbai International Airport (P) Limited V. Regency Convention Centre and Hotels (P) Limited, 2010 (7) SCC 417**, held as follows :

"24.1. If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order I. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

24.2. If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.

24.3. If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.

24.4. If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonfides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co-owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to

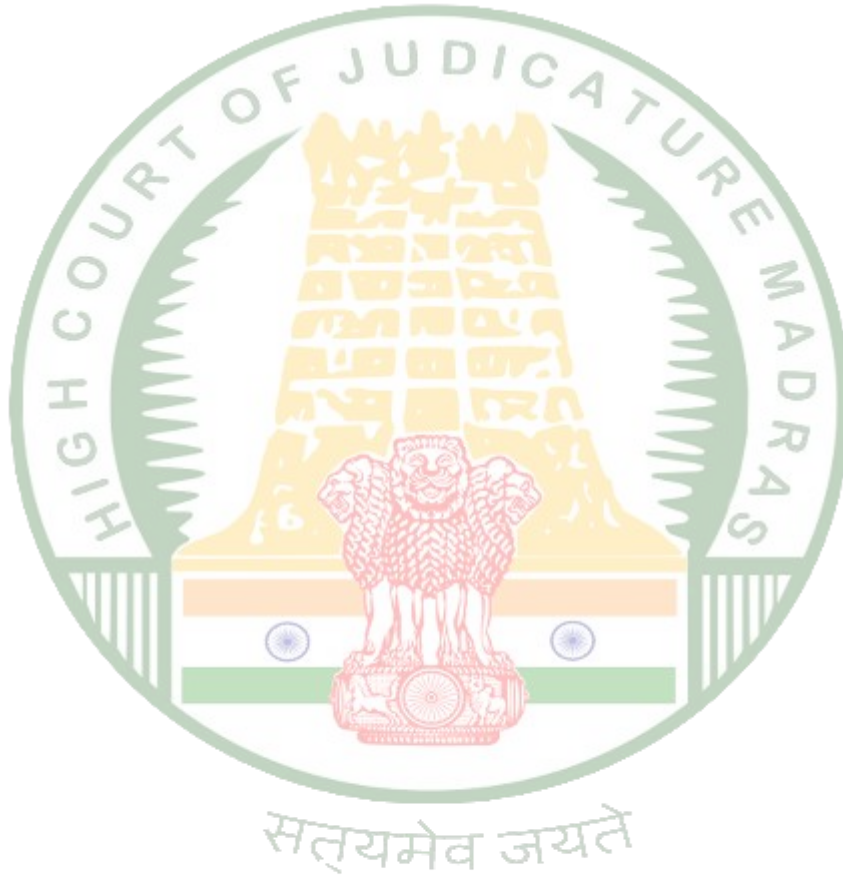
be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced."

10. From the above propositions, it is very clear that the proposed party is neither a necessary party nor a proper party. It is also neither a lessee nor a sub-lessee of the plaintiff. As stated above, the plaintiff also not sought for any relief against the proposed party and its presence is not necessary for adjudication of the suit. Even if the decree is granted in favour of the plaintiff, it will not bind or affect the rights of the proposed party, as the proposed party itself is opposing the impleadment.

11. In support of his submissions resisting the prayer for impleadment, learned Senior Counsel for the proposed party placed

reliance on the decision of this Court in **V.Ravi V. V.Balakrishnan, 2009 (1) CTC 411**. The relevant portion of the said order is usefully extracted hereafter :

"7. It is to be noted that it is the well settled principles of law that a Court of law has wide co-extensive power to implead any person at any stage of the suit as necessary party so as to enable the Court to effectively adjudicate upon the questions involved in the suit. For exercise of such power, however, the Court has to come to a finding that the party is a necessary or proper party. But the trial Court is to exercise its judicial discretion while allowing the application taking into account of the facts and circumstances of the case. Admittedly, litigants ought not to be added as defendants merely because they will be affected by the Judgment or orders of the Court incidentally. No doubt the power of a Court to implead the parties to the proceedings cannot so only depend on the question whether he has interest in the suit property. The proper question to be addressed by the Court is whether the right of the litigants or persons may be affected if they are not arrayed as parties. Such right will however necessarily include an enforceable legal right. The purport of the Rule under Order 1 Rule 10 of CPC is to prevent plurality of action. What makes a person a necessary party is not merely that he has relevant evidence to give on some questions involved ; that would only make him a necessary witness etc., Furthermore, it is not merely that he has an interest in the Correct answer to some of the issues involved and has thought of relevant arguments to project. The only reason which makes him a necessary party to an action is so that he/she 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 effectively and completely settled unless he/she is a party to the case."



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12. In the light of the above factual matrix coupled with the legal aspects, this application fails and the same is dismissed as devoid of merits.

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