

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISION JURISDICTION
[CIRCUIT BENCH AT JALPAIGURI]**

Present:

The Hon'ble Justice Aniruddha Roy

C.O. 78 of 2022

Ejajul Houqe

Vs.

Ekramul Haque & Ors.

For the Petitioner:

**Mr. Subhasish Misra, Adv.,
Mr. Swapan Das, Adv.**

For the Opposite Parties/Interveners: Mr. Nabankur Paul, Adv.

Reserved on:

12.04.2023

Judgment on:

15.05.2023

ANIRUDDHA ROY, J.:

1. This is an application under Article 227 of the Constitution of India.
2. The endorsement of the registry showed that **no caveat** was lodged.

Facts:

3. The petitioner herein was the plaintiff in **Title Suit No. 20 of 2017** instituted and pending before the Learned Civil Judge, LCJ (Junior Division) Court, Sadar, Cooch Behar. Opposite party nos. 19 to 23 were the original defendants in the said title suit. The opposite nos. 1 to 18 were the **proposed interveners** (for short, the said interveners) in the said title suit.

4. The order impugned in this application was the **Order No. 106 dated April 02, 2022** (for short, the impugned order) passed in the said Title Suit by the said Jurisdictional Civil Suit whereunder two applications one being dated April 13, 2021 (for short, the first intervention application) and the other being dated December 04, 2021 (for short, the second intervention application) were allowed and the interveners were added as defendants in the said title suit.

Plaint case:

5. The plaintiff/petitioner claimed to be the **owner of 0.93 acres of land situated at Village & Mouza: Takagachh, District-Cooch Behar, described in “Schedule-A” to the plaint.**
6. In the year 2016 the plaintiff/petitioner claimed to have purchased the said Schedule A land from diverse vendors under a registered deed of conveyance dated October 03, 2016. The plaintiff claimed that prior to purchase of the said land, the plaintiff took possession of the same by paying an advance consideration. The land was then mutated in the name of the plaintiff at **Khaitan No. 4279**. Since then, the plaintiff is residing thereat.
7. The portion of the said Schedule A land which is under occupation of the defendants/opposite parties was specifically mentioned in **Schedule B** (for short, the suit land) to the plaint. At the time of granting permissive occupation to the defendants/opposite parties, it was agreed by and between the parties that the defendants/opposite parties would not raise in permanent structure on the suit land and they would vacate the same within six months from their occupation. However, defendants/opposite parties after taking possession of

the suit land surreptitiously tried to raise permanent structure on the suit land and on May 23, 2017 they accumulated sand, stone and other construction material at the suit land. The plaintiff protested and asked the defendants/opposite parties not to construct any permanent structure on the suit land which was in the process of erection without any prior permission from the plaintiff/petitioner. The defendants/opposite parties on May 24, 2017 started raising permanent structure on the suit land without any permission from the plaintiff/petitioner. On May 26, 2017 the plaintiff visited the suit land and asked the defendant to deliver up the possession of the suit land. The plaintiff/petitioner revoked the license.

8. In the light of the above facts, the plaintiff/petitioner filed the said title suit

Annexure P-1 at page 14 to the application claiming, inter alia, as follows:

“a. For decree of declaration that the defendant was licensee of the scheduled land which has since been revoked.

b. For a decree of eviction of the defendant from scheduled properties.

c. For eviction of the defendant from his illegal possession from suit land and delivery peaceful possession infavour of the plaintiff.

d. For all costs of suit.

e. Mandatory injunction.

f. Such other relief or reliefs as law and equity would allow the plaintiffs”.

9. In the said title suit the two sets of interveners had filed two separate applications seeking addition of party under **Order I Rule 10** read with **Section 151 of the Code of Civil Procedure, 1908** (for short, the Code), **Annexure P-3 at page 35 and 37 to the application.**
10. The said two applications were taken up together and were allowed under the said impugned order.

Submissions:-

11. Mr. Subhasis Misra Learned counsel appeared for the plaintiff/petitioner submitted that, the contention of the interveners was that they were being legal heirs of one Taharmia since deceased, who was the original owner of the suit land, became the owners thereof. The interveners denied the title and ownership of the plaintiff/petitioner over the suit land. On the basis of such contentions the applications for addition of parties were filed and the interveners claimed that they are necessary parties in the said title suit.
12. Learned counsel for the plaintiff/petitioner further submitted that, the title suit was filed by the plaintiff/petitioner for a declaration that the original defendants were the licensee under him and the plaintiff/petitioner further sought for decree for eviction against the original defendants. Through the impugned order by allowing the intervention application, the scope of trial of the original title suit was changed and the nature of the suit became different. The interveners could not claim anything in connection with their alleged title in the said title suit which was a suit for eviction simplicitor.

13. Learned counsel for the plaintiff/petitioner further submitted that, it was a non-speaking order, devoid of any reason, the order cannot sustain in law. None of the submissions of the plaintiff/petitioner was recorded in the said impugned order. The impugned order on the face of it suffered from infirmity and the same is liable to be set aside.
14. Mr. Nabankur Paul learned counsel for the interveners submitted that, the interveners are the actual owner of the suit land. The plaintiff could not have claimed any right, title or interests over and above the suit land. In absence of any right, title or interest the plaintiff/petitioner could not have instituted the said suit for eviction against the original defendants. He further submitted that, for the proper adjudication of the title suit, it was necessary to implead the interveners as party defendants and, therefore, the impugned order was passed in accordance with law and should not be interfered with.
15. Referring to provision under Order I Rule 10 of the Code, Mr. Paul submitted that, the construction of the language of the provision should be as liberal and as wide as possible and should not be restricted merely to the parties involved in the suit but that the attempt should be always be made to make parties all persons who may be necessary in order that there might be a final and complete adjudication of the points involved in the suit. The plaintiff/petitioner not being owner of the suit land could not maintain the said title suit and to adjudicate this issue the presence of the interveners were necessary. While interpreting the provisions under Order I Rule 10 of the Code learned counsel for the interveners submitted that, the true is to be found in the language of

the said provision itself. The Court will have to consider whether the interveners were necessary in order to enable the court to effectively and completely adjudicate upon and settle out the question included in the suit as the expression used in the provisions was that **“as all the questions involved in a suit”** appearing in a rule relating to joinder of parties as absolute and not relative.

16. The object of the provision was that the real dispute raised in the suit should be decided in presence of all the parties interested in the dispute and for that purpose they should be brought before the Court. Order I Rule 10 of the Code was engrafted to ensure that the dispute might be finally determined at the same time in the presence of all the parties interested without the delay and expense of several actions and trials.
13. In support, the learned counsel for the interveners had relied upon the following decisions:-

- 1. In the matter of: Sardar Harbans Singh vs. E.R. Srinivasan &Anr., reported at ILR (1979) 1 Delhi 248.**
- 2. In the matter of: Satish Chandra vs. Bhouri Lal, reported at AIR 1992 Rajasthan 75.**
- 3. In the matter of: Parama Sivam Pillai vs. Adi Lakshmi Ammal, reported at AIR 1953 Madras 618.**

Decision:

17. This scope of adjudication by this Court under Article 227 of the Constitution of India is very limited. The decision making process, as would be evident from

the impugned order can only be scrutinized in the light of the available materials on record as to whether any error had been committed by the learned Court while passing the impugned order which was apparent on the face of it and whether in arriving at the decision, the Court had committed any jurisdictional error or material irregularity both in law and facts and whether there had been any breach of natural justice.

18. After considering the rival contentions raised on behalf of the parties and after considering the materials on record this court proceeded to make a close scrutiny on the impugned order.
19. The title suit is pending for trial. From a close perusal of the averments made in the plaint, it appeared to this Court that, the plaintiff/petitioner claimed to be the owner of the suit land granted license in favour of the original defendants in respect of the suit land and the defendants having committed breach of the agreed terms of its occupation, the plaintiff/petitioner filed the said title suit claiming a declaration that the original defendants were licensee in the suit land which had been revoked and consequently eviction. The plaintiff claimed title on the suit land on the basis of the title document dated October 03, 2016.
20. On a perusal of the applications for addition of parties, it appeared to this Court that, the interveners claimed a rival title on the suit land by way of inheritance and further claimed that the plaintiff/petitioner had no right, title and interest thereupon. The interveners further claimed that for a complete

adjudication of the suit, the presence of the interveners were necessary as party defendants in the suit.

21. The provision under **Order I Rule 10(2) of the Code** is quoted below:

***“(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 the settled all the questions involved in the suit, be added”.*

22. On a meaningful reading of the relevant provision as quoted above, it appeared to this Court that, the Court may at any stage of the proceeding if it appears to the Court just then the Court may pass an order for addition of party be it as plaintiff or defendant, whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon all the questions involved in the suit. A harmonious and purposive construction of the said provision would reveal that, the only consideration before the Court should be effective and complete adjudication of the **questions involved** in the suit.

23. From the averments made in the plaint, it appeared the question that would be involved for adjudication were relating to the status of the original defendants and their eviction from the suit land. There was no scope for involvement of any other question relating to the title of the interveners. If the plaintiff, on the basis of his averments made in the plaint fails to prove its case in trial, the title suit will fail for which no further or other consideration would be required

relating to the interveners. So long the registered indenture dated October 03, 2016 remains, the interveners would not and cannot question the title of the plaintiff/petitioner on the suit land. In the suit filed by the plaintiff with its present reliefs, the interveners could not and cannot claim anything questioning the existence or validity of the said registered deed of indenture dated October 03, 2016 on the basis whereof, the plaintiff/petitioner claimed title and ownership on the suit land. The scope of the plaint cannot be enlarged by way of addition of parties.

24. The claim made by the interveners through their applications for addition of parties by nature itself was an independent claim separate from the claim made by the plaintiff/petitioner in its title suit. The interveners cannot have adjudication on its independent claim in the suit filed by the plaintiff against the original defendants.
25. ***In the matter of: Sardar Harbans Singh (supra)*** one Sardar Soham Singh was the owner of a premises filed an eviction suit against one Srinivasan for recovery of possession. The plaintiff alleged that the Srinivasan being the defendant was in unauthorized possession and had refused to surrender possession to the plaintiff. One Ramanujam filed an application under Order I Rule 10 of the Code, contending that he had been the tenant of Soham Singh in respect of the demised premises and he had sublet the portion of the said demised premises in favour of the original defendant. Hence, Ramanujam being the applicant for addition of party claimed himself to be the original tenant under the plaintiff/petitioner. In such background, the application of the

original tenant for addition of party was allowed. In the instant case, the interveners sought to establish a rival title on the suit land. Hence, the ratio decided in the said judgment had no application in the facts of this case.

26. ***In the matter of: Satish Chandra (supra)*** the applicant seeking addition of party claimed to be direct tenant and not a sub-tenant of the plaintiff in that suit who claimed eviction against the applicant as a sub-tenant. In an ejectment suit filed by the land lord against that tenant if the third person applies for getting himself impleaded as a defendant on the ground that he was the real tenant, he is entitled to be impleaded as a defendant as it would avoid and prevent multiplicity of proceedings and the question would be completely and effectively decided in presence of such parties. The facts and circumstances in the instant case not being such rather being wholly different, the ratio decided in the judgment had no application or relevance in the facts of this instant case.

27. ***In the matter of: Parama Sivam Pillai (supra)*** the suit was a suit for partition. The proposition for addition of party in a partition suit is totally different from the proposition of addition of party in an eviction suit, as parties to a partition suit always have ownership and share on the property. Thus, the ratio decided in the said judgment had no application in the fact of the instant case.

28. Rule 10(2) under Order I of the Code gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. A necessary party is one

without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of the bundle of facts and circumstances of a case. The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions. In the facts of this case as pleaded in the plaint, the plaintiff as the owner of the suit land prayed for a declaration that the original defendants were his licensees and such license was revoked and consequently the plaintiff claimed for eviction of the original defendants. As discussed above already, on the strength of the title document dated October 03, 2016 the plaintiff claimed his ownership on the suit land and filed the suit. So long the said title document is not revoked or cancelled in due process of law, the claim of the plaintiff as an original owner of the suit land cannot be defeated. The interveners in the instant case claimed a rival title on the suit land. If such a claim is allowed to be incorporated in the suit filed by the plaintiff, the purpose, scope and the cause of action in the suit filed by the

plaintiff would be diametrically changed, which is not permissible in law by way of addition of party.

29. The object of the Rule 10(2) of Order I of the Code is not to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an alleged interest in the correct solution of some question involved and has thought of relevant argument to advance. The only reason which makes it necessary to make a person a party to an action is so that he 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 effectually and completely settled unless he is a party.
30. The rule does not contemplate joining as a defendant a person whose only object is to prosecute his own cause of action. In the instant case, this Court is in sesine of the impugned order which was passed in a suit for eviction of an alleged licensee on revocation of license. The interveners wanted to be impleaded under Order I Rule 10 of the Code on the ground that the plaintiff/petitioner had no right title and interest on the property, despite there being a registered title document in favour of the plaintiff. If the interveners are allowed an entry in the suit then a simple suit for eviction of licensee would be converted into a suit for adjudication of title at the instance of a third party.

This will certainly introduce quite a new cause of action. It is true that the carriage of the suit always lies with the plaintiff and unless there is a compelling necessity, the Court will not in exercise of its discretionary power conferred by the code implead a party as co-defendant against the claim of the plaintiff made in this suit.

31. On a further scrutiny of the impugned order, it appeared to this Court that the same is very cryptic in nature and devoid of any reason whatsoever. There was no finding as to the reason for applying its discretion by the Civil Court in allowing the applications for addition of parties.
32. In view of the foregoing discussions and reasons, this Court is of the firm view that, the interveners are neither necessary nor proper parties to the said title suit.
33. For those reasons and discussions the **impugned order dated April 02, 2022 stands set aside and quashed.**
34. Consequently, the **applications for addition of parties filed by the interveners namely opposite party nos. 1 to 18 stand dismissed.**
35. Resultantly, this application, **C.O. 78 of 2022 stands allowed**, without any order as to costs.

(Aniruddha Roy, J.)