

ORDER SHEET

APOT/397/2024
WITH
CS/364/2014
IA NO: GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

MERLYN ARMSTEAD
VERSUS
SUKHLAL CHANDAMULL (P) LTD. AND ANR.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE BISWAROOP CHOWDHURY
Date : 22nd January, 2025.

Appearance:

Mr. Sudip Deb, Adv.
Mr. Shuvasish Sengupta, Adv.
Ms. Smruti Rekha Das, Adv.
Ms. Ipsita Ghosh, Adv.
..for the appellant

Mr. Sabyasachi Chowdhury, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Neelesh Choudhry, Adv.
Ms. Anuradha Poddar, Adv.
..for respondent no.1

Mr. Dhruba Ghosh, Sr. Adv.
Mr. Rohit Banerjee, Adv.
Mr. Altamash Alim, Adv.
...for respondent no.2

Soumen Sen, J. (Oral):

1. The appellant claims herself to be the real tenant of the premises in question.

2. It is claimed that one Mr. L.D. Armstead, since deceased, was a tenant in respect of the suit premises and she used to run a school under the name and style of 'Harrow Hall' as a sole owner on payment of monthly rent under the Karnani Properties Private Limited.
3. The appellant's case in short was that Mrs. L.D. Armstead wrote a letter on 19th November, 1974 to M/s. Karnani Properties Limited bringing to the attention that somebody closed the gate of Karnani Mansion and causing inconvenience to the school students. Subsequently, Mrs. L.D. Armstead incorporated a registered society under the name and style of 'Harrow Hall' which was registered on 13th May, 1987 having Registration No.S/55161 of 1987-88 under the West Bengal Societies Registration Act. Although the said society became a separate entity but Mrs. L.D. Armstead continued to be a tenant in her individual capacity in respect of the suit property. Even though she was not a member of the society, yet her relationship with the society was that of an agent. Mrs. L.D. Armstead died on 21st January, 1995.
4. The present appellant applicant claims herself to be the daughter-in-law (son's wife) and claims to have inherited the estate right in respect of the suit property.
5. On the basis of such averment, the present appellant filed an application being GA/8/2023 praying for addition of the applicant as defendant no.2 in CS/364/2014. The aforesaid suit was a suit for

eviction instituted by one Sukhlal Chandanmull (P) Ltd. as plaintiff against Harrow Hall, the society who was running the school from the said premises. The suit was filed in the year 2014 and the application for addition of party was filed in the year 2023.

6. In the meantime, Merlyn Armstead and Harrow Hall School filed a suit being Title Suit No. 304 of 2022 against Karnani Properties Limited, Sukhlal Chandanmull Private Limited and Harrow Hall for declaration and injunction. It was alleged that although the rent receipts might have been issued in the name of the society, for all intent and purposes, the present applicant/appellant is a tenant in respect of the suit property.
7. In the written statement filed by Harrow Hall in CS/364/2014 it is stated that in course of discussion with B.K. Karnani and said Mrs. Armstead, it was understood and agreed that the society and Harrow Hall School would be entitled to retain perpetual possession of the two rooms and any further rooms that came into possession of Mrs. Armstead in Premises No. 27B, Park Street, Kolkata and that too without payment of rent. The Society further alleged that Mr. Karnani wanted the school to continue and it was his desire that the Society runs the school and accordingly in or about May 13, 1987, Mrs. Armstead registered Harrow Hall as an educational and philanthropic society. The said society was registered in the year 1987.

8. Dispute arose between the parties and the plaintiff Sukhlal Chandanmull Private Limited filed a suit for eviction upon serving a notice under Section 106 of the Transfer of Property Act. The present appellant, as stated earlier, has filed a suit before the City Civil Court being Title Suit No. 304 of 2022 almost after eight years praying, inter alia, for a decree of declaration that Mrs. L.D. Armstead who was a tenant in respect of the suit property in her individual capacity till her death and the present plaintiff i.e., Merlyn Armstead is the tenant in respect of the suit property. Subsequent thereto, this application has been filed for addition of parties alleging that notwithstanding the registration of Harrow Hall as a society, the appellant continued as a tenant in respect of the suit property. It was further claimed that Mrs. L.D. Armstead was throughout in possession of the suit property and the school was her own creation.
9. Harrow Hall is contesting the suit in the High Court. The defendant in the present suit has admitted that on 13th May, 1987 Mrs. Armstead registered an educational/philanthropic society named Harrow Hall and since then Harrow Hall is in possession of the suit property and the society is running the school.
10. Mr. Sudip Deb, learned counsel appearing on behalf of the appellant has referred to the decision of the Hon'ble Supreme Court in ***Razia Begum vs. Sahebzadi Anwar Begum and Others***¹ and ***Terai***

¹ AIR 1958 SC 886

Tea Company Private Limited vs. Kumkum Mittal and Ors.² for the proposition that where the subject matter of litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party, it would be in a better position to effectually and completely adjudicate upon the controversy. It is further submitted that the Court is required to decide whether the rights of the person may be affected if he is not added as a party. Such right however will include necessarily an enforceable legal right.

11. Per contra, Mr. Sabyasachi Chowdhury, the learned Senior Advocate on behalf of the plaintiff submits that the applicant has filed a suit after almost eight years at City Civil Court claiming tenancy rights. An application for addition of party was filed in this suit after nine years after an application for summary judgment was filed. It is a ploy to delay the hearing of the said application. The applicant has no interest in the suit property. The learned Senior Counsel has referred to the written statement of the defendant to show that the society has also not acknowledged the present applicant to have any interest in the suit property.

12. In reply, Mr. Deb has submitted that an application under Clause 13 of the Letters Patent has been filed for transfer of the City Civil

² AIR 1994 Cal 191

Court suit to this High Court for being heard analogously. Mr. Deb has also referred to the written objection filed by the plaintiff in the application for stay of the suit T.S 304 of 2022 filed before the City Civil Court, in which in paragraph 11 it is *inter alia*, stated as follows:

"What is the role of Mrs. L.D. Armstead in relation to the suit property".

13. It is thus argued that if the role of Mrs. L.D. Armstead in relation to the suit property is relevant then the Court is required to decide having regard to the nature of the controversy between the parties, if at all any relief can be granted and issues can be decided in absence of the appellant.
14. We first begin with **Razia Begum** (*supra*) as Mr. Deb has placed strong reliance on the said judgment in this appeal. In **Razia Begum** (*supra*) it appears that one Sahebzadi claiming herself to be the "lawfully and legally wedded wife of the son of Nizam of Hyderabad(hereinafter referred to as "Prince") filed a petition under Order 1 Rule 10(2) of the Code of Civil Procedure, claiming addition of party in the suit instituted by Razia Begum in which Razia Begum alleged that she is the lawfully married wife of the Prince.
15. The suit was instituted by Razia Begum against the second son of the Nizam of Hyderabad (hereinafter referred to as Prince) alleging that she is lawfully married wife of the Prince and the marriage ceremony was duly solemnized in accordance with the Shia Law. It

was averred that three daughters were born of the wedlock and the fact of the said marriage was known to all persons acquainted with the Prince. There was a pre-nuptial agreement where the Prince agreed to pay Rs.2000 per month to the plaintiff as kharch-e-pandan which allowance the Prince stopped since January, 1953. The suit was for declaration of the status of Razia as wife of the Prince and her entitlement to receive the said allowance of Rs.2000 per month. The suit was filed on 22nd April, 1957. On that very date, Sahebzadi filed an application under Order 1 Rule 10 of the Code of Civil Procedure along with her minor son, praying for addition of party on the ground that the said Sahebzadi is the lawfully and legally wedded wife of the Prince and the son born of the said wedlock is the son of the said Prince. In the said application it was averred that Razia asserted her right as the wife of the Prince which status the Prince is denying or interested to deny and the petitioners, namely, Sahebzadi are being joined as parties to the suit would be equally interested in denying the marriage of the plaintiff and her rights and status. In fact, by the said application Sahebzadi wants to establish her status as wife of the Prince and denying the marriage of the plaintiff with Razia.

16. In the said petition, Sahebzadi further alleged that they have reasons to believe that the above suit was a result of collusion and the object and motive of the plaintiff in instituting the suit is to adversely affect the relationship of the petitioners and the defendant and also to

deprive the rights and interests of the petitioners (Sahebzadi) in the defendant's (Prince) estate. The said claim was resisted by Razia Begum on the ground that the said application for addition was mala fide and malicious and she further asserted that the "possibility of the rights of the petitioners being infringed are very remote, contingent upon their or plaintiff surviving the defendant or other circumstances which may or may not arise."

17. The plaintiff referred to the admission of the defendant (Prince) in the written statement and asserted that the petitioners were neither necessary nor proper parties to the suit. The Prince in his answer to the application admitted that the first respondent is his wife and the second respondent is his son and also repeated his admission of marriage to the plaintiff in October, 1948, and the first respondent in December, 1952. The Prince contended that when he married the first respondent, he had already three daughters by the plaintiff, which fact was known to the first respondent at the time of her marriage with him. The Prince supported the plaintiff in her objection to the intervention by asserting that the rights of the respondents 1 and 2 would not be affected in any way, and by insisting upon his Muslim right of having four wives living at the same time. The Prince also supported the plaintiff in her denial of the allegation of collusion. On these allegations and counter-allegations, the Trial Judge allowed the application of intervention, and directed the addition of the

respondents 1 and 2. The reasons for allowing such addition of parties was that the record of the proceedings suggest of a possible collusion between the plaintiff and the defendant and that the relief claimed under Section 42 of the Specific Relief Act, being discretionary, could not be granted as of right. It was further held that the presence of the interveners would help the court in unraveling the mysteries of litigation and that there was force in the contention put forward on behalf of the interveners that under Section 43 of the Specific Relief Act, any declaration given in favour of the plaintiff, would be binding upon the interveners. It was further held that for the purpose of effectual and complete adjudication of the issues involved and to settle the present controversy, the presence of the interveners was necessary.

18. The Hon'ble Supreme Court in such factual background construed Order 1 Rule 10(2) of the Code of Civil Procedure and laid down the law in paragraphs 12, 13 and 14 which are reproduced hereinbelow:-

"12. When a declaratory judgment has been given, by virtue of S. 43, it is binding not only on the persons actually parties to the judgment but their privies also, using the term 'privy' not in its restricted sense of privy in estate, but also privy in blood. Privity may arise (1) by operation of law, for example, privity of contract; (2) by creation of subordinate interest in property, for example, privity in estate as between a landlord and a tenant, or a mortgagor and a mortgagee; and (3) by blood, for example, privity in blood in the case of ancestor and heir. Otherwise, in some

conceivable cases, the provisions of S. 43, quoted above, would become otiose. The contention raised on behalf of the appellant, which was strongly supported by the third respondent through Mr. Pathak, as stated above, is that a declaratory judgment would not bind anyone other than the party to the suit unless it affects some property, in other words, unless the parties were privy in estate. But such a contention would render the provisions of S. 43 aforesaid, applicable only to declarations in respect of property and not declarations in respect of status. That could not have been the intendment of the statutory rule laid down in S. 43. Sections 42 and 43, as indicated above, go together, and are meant to be co-extensive in their operation. That being so, a declaratory judgment in respect of a disputed status, will be binding not only upon the parties actually before the Court, but also upon persons claiming through them respectively. The use of the word 'only' in S. 43, as rightly contended on behalf of the appellant, was meant to emphasize that a declaration in Chap. VI of the Specific Relief Act, is not a judgment in rem. But even through such a declaration operates only in personam, the section proceeds further to provide that it binds not only the parties to the suit, but also persons claiming through them, respectively. The word 'respectively' has been used with a view to showing that the parties arrayed on either side, are really claiming adversely to one another, so far as the declaration is concerned. This is an other indication of the sound rule that the Court, in a particular case where it has reasons to believe that there is no real conflict, may, in exercise of a judicial discretion, refuse to grant the declaration asked for oblique reasons.

13. As a result of these considerations, we have arrived at the following

conclusions:

- (1) *That the question of addition of parties under R.10 of O.1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in S.115 of the Code;*
- (2) *That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;*
- (3) *Where the subject-matter of a litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy;*
- (4) *The cases contemplated in the last proposition, have to be determined in accordance with the statutory provisions of Ss.42 and 43 of the Specific Relief Act;*
- (5) *In cases covered by those statutory provisions, the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;*
- (6) *The result of a declaratory decree on the question of status, such as in controversy in the instant case, affects not only the parties actually before the Court, but generations to come, and in view of that consideration, the rule of 'present*

interest', as evolved by case law relating to disputes about property does not apply with full force; and

(7) The rule laid down in S.43 of the Specific Relief Act, is not exactly a rule of *res judicata*. It is narrower in one sense and wider in another.

14. Applying the propositions enunciated above to the facts of the instant case, we have come to the conclusion that the courts below did not exceed their power in directing the addition of the respondents 1 and 2 as parties-defendants in the action. Nor can it be said that the exercise of the discretion was not sound. Furthermore, this case comes before us by special leave, and we do not consider that it is a fit case where we should interfere with the exercise of discretion by the courts below. The appeal is, accordingly, dismissed. As regards the question of costs, we direct that it will abide the ultimate result of the litigation, and will be disposed of by the trial court." (emphasis supplied).

19. Unlike Razia Begum, in the instant case the interest of the appellant, if any, has not been borne out from the pleadings. Merely because the applicant is the daughter-in-law she apparently does not acquire any interest in the suit property as the society seems to be in control of the school since 1988 and rent receipts were being issued in the name of the school. The society owns the school. The legally enforceable right referred to in Terai Tea Company Private Limited does not apply in the instant case as the Society in the written statement has categorically stated that rents are being paid by the

Society. Moreover, a society registered under the West Bengal Societies Registration Act is a juristic entity.

20. In ***Firm of Mahadeva Rice and Oil Mills and others v. Chennimalai Goundar***³ the Hon'ble Court laid down the following tests required to be following in considering an application filed under Order 1 Rule 10(1) of the Code of Civil Procedure:-

"No amount of assertion on the part of the parties to a lis to the effect that it would avoid multiplicity of suits, that it would be convenient for purposes of trial, that it would not cause prejudice to any party, would be of any avail. If the cardinal test, namely, for a final adjudication of the "real controversy such addition is necessary, is not satisfied, then it cannot be said with any reasonable certainty that the proposed party is a proper party. I am of the opinion that the following tests may be formulated usefully as a guidance in the case of adding of parties under O.1 R.10, Civil P.C.: (1) If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded. (2) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject-matter which could still have been decided in the pending suit itself; (3) The proposed party has a defined, subsisting, direct and substantive interest in the litigation, which interest is either legal or equitable and which right is cognisable in law; (4) Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to

³ AIR 1968 Mad 287

ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and (5) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the suit" (emphasis supplied)

21. In the case of **Durga Das and Ors. v Solace and Associates**⁴ a single bench comprising of one of us (Soumen Sen, J.) has considered Order 1 Rule 10(2) while referring to the landmark case of **Razia Begum** (supra) in the following manner:

"The procedure prescribed under Order 1 Rule 10 of the Code of Civil Procedure would apply to implead a necessary or proper party to effectuate complete adjudication of all the disputes that have arisen between all the necessary or proper parties who may be bound by the decision.

The question of addition of parties under Order 1 Rule 10 of the Code of Civil Procedure is generally not one of initial jurisdiction of the Court, but of judicial discretion which has to be exercised in view of the facts and circumstances of a particular case. In a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation. Where the subject- matter of the litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the

⁴ MANU/WB/0235/2012

opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy. In *Razia Begum (supra)* the rule was relaxed since a declaratory decree on the question of status, such as in controversy in the said case, affects not only the parties actually before the Court but generations to come, and in view of that consideration, the rule of present interest, as evolved by case law relating to disputes about property does not apply with full force.

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Under sub-rule(2) of Rule 10, only two classes of persons may be added as parties to a suit: (1) necessary party, i.e. a person who ought to have been joined as a party and in whose absence no decree or order can be passed; or (ii) proper party, ie, a person, whose presence is necessary for complete and effectual adjudication of the questions involved in the suit. If a person is neither a necessary nor a proper party, he cannot be impleaded in a suit.

A person cannot be impleaded merely because he would be incidentally affected by the judgment, or is interested in the fruits of the litigation, or his presence may enable the court to come to a correct solution of the dispute before the court. What is to be seen in allowing or disallowing an application for addition of a party is whether such addition would be consistent with the scope of the inquiry necessitated in the pending suit and in the absence of such a party it would not be possible to completely and effectively adjudicate the controversy raised before the court. The main object of the rule is not to prevent multiplicity of actions or avoid fresh litigation, but to consider whether the person is directly or legally in the action" (emphasis supplied)

22. The Apex Court in the case of **New Redbank Tea Co. Pvt. Ltd. v Kumkum Mittal and Others**⁵ observed as follows:

"11. In the leading English case of Moser v. Marsden, Lindly L.J. has held that a party who is not directly interested in the issues between the plaintiff and the defendant but is only indirectly or commercially affected cannot be added as a defendant because the court has no jurisdiction under the relevant rule to bring him on record even as a proper party. The position is no different under the Indian law. As laid down by this Court, "in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation". [See: Razia Begum v. Sahebzadi Anwar Begum³. In Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay this Court has held: (SCC p. 531, para 14)

"It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect.... It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action." (emphasis supplied)

23. In **Ramesh v. Municipal Corpn. Of Greater Bombay**,⁶ the Hon'ble Supreme Court held as follows:-

⁵ 1994(1) SCC 402

⁶ 1992 (2) SCC 524

"It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may have 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 interest in the correct solution of some question involved and has thought of arguments 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. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e. he can say that the litigation may lead to a result which will affect him legally, that is, by curtailing his legal right. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action."
(emphasis supplied)

24. In **Antony Devaraj v. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula, Annai Church rep by the Trustee**,⁷ the Madras High Court considered the right of a third party to claim addition of party. It was held as follows:-

⁷ 2004 (2) C.T.C. 183

"(iii). The person to be added as one of the parties 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 given on some of the questions involved, but it should make him as necessary witness.

(iv). The third party cannot be considered to be a necessary party for deciding the main issue framed in the suit. Mere ground that inclusion of the proposed third party would not alter the structure of the suit may not entitle the party to ask the Court to implead the third party as a defendant.

(v) The Court may upon an application or suo motu, in a fit and proper case, implead a new party as defendant, even against the plaintiff's consent under certain circumstances. The discretion vested with the Court though wide is however circumscribed by the limitations which are built in the provisions contained in Order 1 Rule 10(2), C.P.C. Where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party. If the question at issue between the parties can be worked out without anyone else being brought in, the stranger should not be added as a party.

(vii) A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit.

(viii) Persons whose interest would be affected by the litigation are entitled to come on record to protect their interest when those are

jeopardized by the persons already on record." (emphasis supplied)

25. In the written statement filed by Harrow Hall in C.S. No. 34 of 2014 apart from the statements made as to the contribution of Mrs. L.D Armstead in acquiring the said premises from Mr. B.K Karnani for establishing the school and being a member of Harrow Hall Society there is no assertion as to her ever being a tenant in respect of the suit premises instead of Harrow Hall.
26. The role of Mrs. L.D. Armstead in the form of a facilitator of the suit property being granted for establishing the school, will not act as a determinant of the rights of any of the parties. Merely owing to the fact that Mrs. Armstead had during her social and charitable roles assisted and facilitated in securing the said premises in the absence of her being expressly granted such tenancy or any rent receipts being issued in her name, such fact would not give her or her present legal heir a defined, subsisting, direct and substantive interest in the suit for eviction against the respondent No. 2 in CS No.364 of 2014 as a tenant. Caution must also be exercised by the Court lest considerable prejudice is caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the suit.
27. However, for the purpose of addition of parties on the principles of law as discussed earlier and as evident from the pleadings it would

not show that the defendant in the High Court suit i.e., C.S. No. 364 of 2014 has admitted or acknowledged that although the society became a tenant in which Late Mrs. L.D. Armstead had taken a keen interest and facilitated the society to obtain certificate of enlistment by the Council for Indian School Certificate Examination in 1988 in favour of the society the plaintiff acknowledged Mrs. L. D. Armstead as tenant and in view thereof the applicant/appellant cannot be considered to be a necessary or a proper party in the present suit. In view of the aforesaid we do not find any reason to interfere with the order passed by the learned Single Judge.

28. We make it clear that these observations should not be read out of context and only limited to the issues involved in this appeal, namely, the addition of parties of the present appellant/applicant.
29. The appeal and the application stand dismissed.
30. There shall be no order as to costs.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)