

PETITIONER:
RAMESH HIRANAND KUNDANMAL

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF GREATER BOMBAY AND ORS.

DATE OF JUDGMENT 04/03/1992

BENCH:
FATHIMA BEEVI, M. (J)
BENCH:
FATHIMA BEEVI, M. (J)
AGRAWAL, S.C. (J)

CITATION:
1992 SCR (2) 1 1992 SCC (2) 524
JT 1992 (2) 116 1992 SCALE (1) 530

ACT:

Civil Procedure Code, 1908 :
Order I, Rule 10-Impleadment of party by Court to a suit as necessary party-Necessary to proper party-Who is-Distinction between necessary and proper party-Suit filed by a plaintiff, in possession of service station under an agreement, with lessee thereof challenging validity of notice issued by Municipal Corporation, for demolition of structures raised by plaintiff as unauthorised-Lessee seeking impleadment as additional defendant as necessary party- Whether Court could direct plaintiff to add lessee as defendant in suit-Whether Court has discretion to direct a plaintiff, though dominus litis, to implead a person as a necessary party.

Words and Phrases : Necessary or proper party-Meaning of.

HEADNOTE:

Under a Dealership Agreement, the appellant was in possession of a service station erected on the land held by the second respondent- the Hindustan petroleum Corporation limited, as lessee. The service station consisted of a petrol pump in the ground floor and a structure with an open terrace for parking of vehicles. The first respondent, Municipal Corporation issued notice under section 351 of the Municipal Corporation Act to the appellant for demolition of two chattels on the terrace on the ground that these were unauthorised constructions.

The appellant instituted a suit before the City Civil Court, challenging the validity of the notice and for injunction restraining the Municipal Corporation from demolishing the structures. The Court granted an interim injunction.

Thereafter, on an application filed by the second respondent for being impleaded as additional defendant in the suit on the ground that it had materials to show that the constructions were unauthorised, and it was a necessary party to the litigation, the court directed the appellant to

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add the second respondent as defendant and amend the plaint suitably rejecting the appellant's contention that the second respondent was neither a necessary nor a proper party

to be impleaded in the suit. The appellant's writ petition challenging the aforesaid order was dismissed by the High Court.

In the appeal, by special leave, before this Court, on behalf of the appellant-plaintiff it was contended that the appellant-plaintiff was dominus litis and, therefore, could not be forced to join the second respondent Corporation as defendant, that second respondent was neither a necessary nor a proper party to the suit and had no interest in the subject-matter of the litigation and its presence was not required to adjudicate upon the issue involved in the suit or for the purpose of deciding the real matter and on the contrary, its addition would enlarge the issue in the suit, and that the Court could not direct addition of parties against the wishes of the plaintiff, who could not be compelled to proceed against a person against whom he did not claim any relief.

On behalf of the respondent it was contended that the second respondent had a right to be heard in the suit inasmuch as the respondent was the lessee, who was not answerable for the illegal actions of the appellant.

Allowing the appeal, this Court,

HELD : 1.1 Plaintiff is no doubt dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. The question of impleadment of a party has to be decided on the touch stone of Order 1 Rule 10 of the Code of Civil Procedure, 1908, which provides that only a necessary or a proper party may be added. In the light of the clear language of the Rule, it cannot be said that a person cannot be added as defendant even in a case where his presence is necessary to enable the Court to decide the matter effectively. [6E-F, 7A-D]

1.2 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

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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 all the facts and circumstances of a particular case. [7A-B]

1.3 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. [7E-F]

1.4 A clear distinction has been drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the Commercial interest is required to be shown before a person may be added as a party. [9E]

1.5 It cannot be said that the main object of the rule is 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-and not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is 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 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. [9F-H, 10A-B]

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Razia Begum v. Anwar Begum, [1959] SCR 1111, relied on. Amon v. Raphael Tuck & Sons Ltd., (1956) 1 All E.R. 273 and Dollfus Mieg et Compagnie S.A. v. Bank of England, (1950) 2 All E.R. 611, referred to.

2.1 In the instant case, the courts below have assumed that the subject-matter of the litigation is the structure erected by the respondent or, in other words, the service station which has been allowed to be operated upon by the appellant-plaintiff under the terms of the dealership agreement. The notice does not relate to that structure but is in relation to the two chattels stated to have been erected by the appellant unauthorisedly. The second respondent has no interest in these chattels, and the demolition of the same in pursuance to the notice is not a matter which affects the legal rights of the respondent. [11G-H, 12A]

National Textile Workers' Union, etc. v. P.R. Ramakrishnan and Ors., [1983] 1 SCR 922, distinguished.

2.2 It is true that being lessee of the premises, second respondent Corporation has an answer for the action proposed by the first respondent-Municipal Corporation against the appellant but for the purpose of granting the relief sought for by the appellant by examining the justification of the notice issued by the Municipal Corporation, it is not necessary for the Court to consider that answer. Hence the presence of the respondent cannot be considered as necessary for the purpose of enabling the Court to effectually and completely adjudicate upon and settle all the question involved in the suit. The appellant is proceeded against by the first respondent-Corporation for the alleged action in violation of the municipal laws. The grievance of the second respondent against the appellant, if any, could only be for violation of the agreement and that is based on a different cause of action. The consolidation of these two in the same suit in neither contemplated nor permissible. [10F-H, 11A]

2.3 The courts below failed to note that the second respondent has no direct interest in the subject-matter of the litigation and the addition of the respondent would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would

only widen the issue which is required to be adjudicated and settled. By the joining of the party would embarrass the appellant-plaintiff and issues

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not germane to the suit would be required to be raised. The mere fact that a fresh litigation can be avoided is no ground to invoke the power under the Rule in such cases. [12B-C]

National Textile Worker's Union, etc.v.P.R. Ramakrishnan and Ors., [1983] 1 SCR 922, distinguished.

2.4 Therefore, the courts below were wrong in concluding that the second respondent was a necessary or a proper party to be added as a defendant in the suit instituted by the appellant.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3570 of 1991.

From the Order dated 13.10.1989 of the Bombay High Court in Writ Petition No. 4229 of 1989.

K. Parasaran, Joquium Reis and Kailash Vasdev for the Appellants.

D.N. Mishra (for J.B.D. & CO.) and M.S. Ganesh for the Respondents.

The Judgement of the Court was delivered by

FATHIMA BEEVI, J. We have to consider in this appeal the question whether the second respondent is a necessary or proper party to be joined as defendant under Order 1 Rule 10 of the Code of Civil Procedure, in the suit instituted by the appellant against the first respondent.

Under the dealership Agreement of 1974, the appellant is in possession of the service station erected on the land held by the second respondent herein, the Hindustan Petroleum Corporation Limited as lessee. The service station consists of a petrol pump in the ground floor and a structure with an open terrace for parking of vehicles. The first respondent, the Municipal Corporation of Greater Bombay issued notice dated 5.8.1988 under section 351 of the Municipal Corporation Act to the appellant for demolition of two chattles on the terrace on the ground that these were unauthorised constructions. The appellant instituted the suit No. 6181 of 1988 before the City Civil Court, Bombay, challenging the validity of the notice and for injunction restraining the Municipal Corporation from demolishing the structures, Interim injunction was granted by the court.

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On 9.9.1988, the second respondent applied for being impleaded as additional defendant in the suit on the ground that they have materials to show that the constructions are unauthorised, and they are necessary parties to the litigation. The Court by order dated 22.8.1989 directed the appellant to add the second respondent as defendant and amend the plaint suitably rejecting the contentions of the appellant that the second respondent was neither a necessary nor a proper party to be impleaded in the suit. The appellant filed writ petition No. 4229 of 1989 under Article 227 of the Constitution of India in the High Court of Bombay challenging the correctness of the order. The High Court by the impugned judgment dismissed the writ petition. This appeal by special leave is directed against the judgement of the High Court dated 13.10.1989.

Three grounds have been urged by the learned counsel for the appellant against the sustainability of the order.

The plaintiff was dominus litis and, therefore, cannot be forced to join the second respondent as defendant. The second respondent is neither a necessary nor a proper party to the suit. The addition of the respondent would enlarge the issue in the suit. Reliance was placed on the decision of this Court in Razia Begum v. Anwar Begum, [1959] SCR 1111.

It was argued that the Court cannot direct addition of parties against the wishes of the plaintiff who cannot be compelled to proceed against a person against whom he does not claim any relief. Plaintiff is no doubt dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed though under Order I Rule 3, to avoid multiplicity of suit and needless expenses, all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

Sub-rule(2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the

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plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touch stone of Order I Rule 10 which provides that only a necessary or a proper party may be added. 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 all the facts and circumstances of a particular case.

The respondents do not seriously dispute the position that the second respondent is not a necessary party to the suit in the sense that without their presence an effective order cannot be passed. However, they support the view that respondent No. 2 is a proper party whose presence is necessary for a complete adjudication on the controversy. In the light of the clear language of the Rule, it is not open to the appellant to contend that a person cannot be added as defendant even in a case where his presence is necessary to enable the Court to decide the matter effectively.

The case really turns on the true construction of the Rule in particular the meaning of the words "whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." 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 intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

In the present case, the subject-matter of the dispute between the appellant and the first respondent is the demolition of the unauthorised construction in pursuance to the notice under section 351 of the Bombay Municipal Act. The second respondent, the lessee, in possession of the service station asserts that the appellant has made an unauthorised construction and the second respondent is in possession of material evidence to that effect. No notice has been issued to the second respondent by the

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Municipal Corporation and no case of any collusion between the appellant and the Municipal Corporation is alleged. On the other hand, it is the case of the appellant that the second respondent is instrumental in the initiation of the proceedings by the Municipal Corporation against the appellant and the present application is for collateral purposes. In the light of such averments, it has to be considered whether the second respondent is a necessary or proper party in the present action.

The power of the Court to add parties under Order I Rule 10, C.P.C, came up for consideration before this Court in Razia Begum (supra). In that case it was pointed out that the Courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the Court and that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject-matter of the litigation whether it be the questions relating to movable or immovable property.

In that case the appellant instituted a case against the third respondent inter alia for a declaration that she was his lawfully married wife. The third respondent filed his written statement admitting the claim but on the same date respondents 1 and 2 made an application under Order I Rule 10(2) of C.P.C., for being impleaded in the suit as defendants on the grounds that they were respectively the wife and son of the third respondent and that they were interested in denying the appellant's status as wife and the status of children as the legitimate children of the third respondent; that the suit was the result of the collusion between the appellant and the third respondent and that if the appellant was declared to be lawfully wedded to the third respondent, the rights and interests of respondents 1 and 2 in the estate of the third respondent would be affected. The application was contested by both the appellant and the third respondent. The trial court allowed the application and the order was confirmed by the High Court in its revisional jurisdiction. The question in the appeal before this Court was whether the lower court did not exceed their powers in directing the addition of respondents 1 and 2 as parties defendants in the action.

Sinha, J. speaking for the majority said that a declaratory judgment in respect of a disputed status will be binding not only upon parties actually before the Court but also upon persons claiming through them respectively. The Court laid down the law that in a suit relating to property in order

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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 a litigation is a declaration as regards status or a legal character, the rule of presence of 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. In cases covered by the statutory provisions of sections 42 and 43 of the Specific Relief Act, 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, the result of a declaratory decree on the question of status such as the controversy in that suit affects not only the parties actually before the Court but generation 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. Applying the proposition enunciated to the facts of the case, the Court came to the conclusion that the courts below did not exceed their power in directing the addition of respondents 1 and 2 as parties defendants in the action nor it could be said that the exercise of the discretion was not bound.

A clear distinction has been drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party.

It cannot be said that the main object of the rule is 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 objectives. 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 questions involved and has thought or relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is 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 wider construction of

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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 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. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.*, (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A v. Bank of England*, (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated:-

"The test is 'May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights.'"

It has been strenuously contended before us that the second respondent has no interest in the subject-matter

of the litigation and the presence of the respondent is not required to adjudicate upon the issue involved in the suit or for the purpose of deciding the real matter involved. It is pointed out that the subject-matter in the suit is the notice issued by the Municipal Corporation to the appellant and the issue is whether it is justified or not. The Hindustan Petroleum Corporation Limited is interested in supporting the Municipal Corporation and sustaining the action taken against the appellant. But that does not amount to any legal interest in the subject-matter in the sense that the order, if any, either in favour of the appellant or against the appellant would be binding on this respondent. It is true that being lessee of the premises, the Hindustan Petroleum Corporation Limited has an answer for the action proposed by the Municipal Corporation against the appellant, but for the purpose of granting the relief sought for by the appellant by examining the justification of the notice issued by the Municipal Corporation, it is not necessary for the Court to consider that answer. If that be so, the presence of the respondent cannot be considered as necessary for the purpose of enabling the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The appellant is precluded against by the municipal Corporation for the alleged action in violation of the municipal laws. The grievance of the

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respondent against the appellant, if any, could only be for violation of the agreement and that is based on a different cause of action. The consolidation of these two in the same suit is neither contemplated nor permissible.

The learned counsel for the respondent on a reference to the broad principles laid down in *National Textiles v. P.R. Ramakrishnan*, [1983] 1 SCR 922, maintained that the second respondent has a right to be heard in the suit filed by the appellant against the Municipal Corporation inasmuch as the respondent is the lessee who is not answerable for the illegal action of the appellant. It was held in that case that the workers of a company are entitled to appear at the hearing of the winding up petition whether to support or oppose it. The court considered wider public interest involved and said that in winding up of a company or changing its management, the Court must take into consideration not only the interest of the shareholders, creditors but also amongst other things the interest of the workers and that the workers must have an opportunity of being heard for projecting and safeguarding their interest before a winding up order is made by the Court. That principal has no application in a civil litigation where licensee questions the action of the legal authority and the lessee would not be affected in whatever way the decision is rendered.

The City Civil Judge in para 32 of the order said that the Hindustan Petroleum Corporation Limited are the lessees of the plot as also the premises, the plaintiff is merely their dealer; they have a right, title and interest in the suit premises and the applicants are proper and necessary parties as they have interest in the subject-matter of the litigation and their presence will be necessary and proper to effectively adjudicate upon and determine the cause of action in the suit. The High Court also in confirming the order said that the

notice which is challenged is in respect of structure which belongs to the second respondent and the respondent's presence is necessary for effective adjudication.

The courts below have assumed that the subject-matter of the litigation is the structure erected by the respondent or in other words the service station which has been allowed to be operated upon by the plaintiff under the terms of dealership agreement. The notice does not relate to that structure but is in relation to the two chattels stated to have been erected by the present appellant unauthorisedly. According to the appellant these chattels/structures are moveables on wheels and plates where servicing

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and/or repairs are done and used for storing implements of the mechanics. The second respondent has no interest in these chattels and the demolition of the same in pursuance to the notice is not a matter which affects the legal rights of the respondent. The courts below, therefore, failed to note that the second respondent has no direct interest in the subject-matter of the litigation and the addition of the respondent would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which is required to be adjudicated and settled. By the joining of the party would embarrass the plaintiff and issues not germane to the suit would be required to be raised. The mere fact that a fresh litigation can be avoided is no ground to invoke the power under the Rule in such cases.

We are, therefore, of the view that the courts below were wrong in concluding that the second respondent is a necessary or a proper party to be added as a defendant in the present suit instituted by the appellant.

We accordingly allow the appeal and set aside the impugned judgment. No order as to costs.

N.V.P.

Appeal allowed.

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