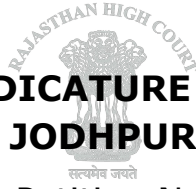




[2024:RJ-JD:47503]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 14266/2024

Satay Narayan Gaur S/o Mangilal Ji Gaur, Aged About 65 Years,
R/o C/o Ganeshi Lal Petrol Pump, Near Medical College,
Residency Road, Jodhpur.

-----Petitioner

Versus

1. Smt. Anjana D/o Dau Lal Ji Ropiya W/o Ghewar Chand Ji Mangal, R/o Chopasani Housing Board, Jodhpur.
2. Prem Chand S/o Badri Narayan Ji, R/o Plot No. A, Khasra No. 734, Jhalamand Circle, Near Saraswati Nagar, Jodhpur.
3. Babu Lal S/o Badri Narayan Ji, R/o Plot No. A, Khasra No. 734, Jhalamand Circle, Near Saraswati Nagar, Jodhpur.
4. Tikam Chand, As Secretary Kashi Higher Primary School, Plot No. A, Khasra No. 734, Jhalamand Circle, Near Saraswati Nagar, Jodhpur.

-----Respondents

For Petitioner(s) : Ms. Anushri Gaur and Mr. Aman Gaur
For Respondent(s) :

HON'BLE DR. JUSTICE NUPUR BHATI**Order****22/11/2024**

1. This writ petition has been filed by the petitioner-defendant under Article 226 and 227 of the Constitution of India challenging the order dated 08.08.2024 (Annex.3) passed by learned Additional District Judge, Jodhpur in Case No. 173/2014, whereby the application under Order I Rule 10 of the Code of Civil Procedure, 1908 ('CPC') filed by the petitioner-defendant, has been rejected.



2. The writ petition has been preferred with the following prayers:

"It is, therefore, most humbly and respectfully prayed that this writ petition may kindly be allowed and :-

(A) By an appropriate writ order or direction the order impugned dated 08.08.2024 (Annex.2) passed by Additional District Judge no. 3, Jodhpur in Suit No. 20/2010 titled as Smt. Anjana V/s Satay Narayan Gaur & Ors. may kindly be quashed and set aside and the application filed by the Petitioner under order 1 Rule 10 CPC may kindly be allowed as prayed for.

(B) Any other appropriate order or relief which this Hon'ble court may deem just and proper in the facts and circumstances of this case may kindly also be passed in favour of Favour the humble Petitioners."

3. Briefly stated, the facts of the case are that plaintiff/respondent no. 1 filed a suit (Annex.1) for possession, permanent injunction and recovery before the learned District Judge for the plot situated at Khasra No. 734. Jhalamand Circle, near Saraswati Nagar, Jodhpur in response to which the petitioner/defendant no. 1 and defendants/respondents no. 2 to 4 filed their reply. In the meanwhile, the petitioner preferred an application (Annex.2) under Order I Rule 10 of the CPC, seeking impleadment of the Sub-Registrar Office, Jodhpur and the Additional Collector (Agriculture Land Conversion), Jodhpur as defendant no. 5 and 6 respectively.

4. Learned Trial Court after hearing the matter, vide order dated 08.08.2024 (Annex.3) rejected the application filed by the petitioner-defendant no. 1 filed under Order I Rule 10 of the CPC. Thus, aggrieved of the order dated 08.08.2024 (Annex.3) passed



by the learned Trial Court, the petitioner-defendant no. 1 has preferred the writ petition.

5. Learned counsel for the petitioner-defendant no. 1 submits that the learned Trial Court has erred in rejecting the application filed by the petitioner-defendant no. 1 for impleading the necessary parties inasmuch as it has been averred in the plaint that the respondent no. 1 had purchased the said property in dispute on the basis of false and fake documents and that, the documents of the Patta issued on 09.09.1991 as stated in the suit, have not been taken on record in the Sub Division Office, therefore, the Sub-Registrar Office, Jodhpur and the Additional Collector (Agriculture Land Conversion), Jodhpur, are required to be impleaded to the suit, in order to determine the veracity and the validity of the documents produced on the basis of which plaintiff/respondent no.1 had purchased the property.

6. Learned counsel for the petitioner-defendant no. 1 also relied upon the judgment rendered by the Hon'ble Apex Court in the case of **Baluram v. P. Chellathangam & Ors.** reported in **AIR 2015 SC 1264**, wherein the Hon'ble Apex Court has observed that the Court can add anyone as plaintiff or as a defendant if it finds that he is a necessary party or proper party and therefore, she submits that the learned Trial Court has erred in not impleading the Sub-Registrar Office, Jodhpur and the Additional Collector (Agriculture Land Conversion), Jodhpur, even when they are a necessary party to the suit, required for determining the



validity of the documents produced, on the basis of which the plaintiff/respondent no. 1 had purchased the said property.

7. Heard learned counsel, perused material available on record and judgment cited at the Bar.

8. This Court finds that, under Order I Rule 10 of the CPC, for determining whether a party is a necessary party or not, it is important to ascertain that he is bound by the result of the action and the question which is required to be settled with the suit and that, such question cannot be settled effectually and completely unless he is a party. The provision is reproduced as under:

"ORDER I

Parties to Suits

10. Suit in name of wrong plaintiff.—

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(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 and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent."



9. In pursuance of the same, this Court takes into consideration the judgment rendered by the Hon'ble Apex Court in the case of **Ramesh Hiranand Kundanmal v Municipal Corporation of Greater Bombay** reported in (1992) 2 SCC 524, wherein the Hon'ble Apex Court has categorically observed that merely because a person has the relevant evidence to give on the questions involved, would not make that person a necessary party. The relevant para of the judgment rendered in the case of **Ramesh Hiranand** (supra) is reproduced as under:

"It cannot be said that the main object of the rule isto 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 the rule between the direct interest or the legal interest and commercial interest.

xxxxx "

Therefore, in the light of the judgment rendered by the Hon'ble Apex Court in the case of **Ramesh Hiranand** (supra), this Court finds that the sole reason given by the petitioner/defendant no.1 for impleading the Sub-Registrar Office, Jodhpur and the





Additional Collector (Agriculture Land Conversion), Jodhpur, was for the purpose of determining the validity of the documents produced, on the basis of which the plaintiff/respondent no.1 had purchased the disputed property and therefore, solely on the said ground the Sub-Registrar Office, Jodhpur and the Additional Collector (Agriculture Land Conversion), Jodhpur, cannot be considered as a necessary party.

10. Moreover, this Court also takes into consideration the judgment rendered by the Hon'ble Apex Court in the case of **Gurmit Singh Bhatia v. Kiran Kant Robinson** reported in **AIR 2019 SC 3577**, wherein the Hon'ble Apex Court has observed that in order to determine whether a party is necessary party or not, the two tests, include, *firstly*, there has to be a right to some relief against such party with respect to the controversy involved in the proceedings and *secondly*, no effective decree can be passed in the absence of such party. The relevant part of the judgment passed by the Hon'ble Apex Court in the case of **Gurmit** (supra) is reproduced as under:

"5.2 An identical question came to be considered before this Court in the case of Kasturi (supra) and applying the principle that the plaintiff is the dominus litis, in the similar facts and circumstances of the case, this Court observed and held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question who is a necessary party. The tests are – (1) there must be a right to some



relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.

xxxx"

Therefore, applying the two tests to the present case, this Court finds that there is no right to relief against the Sub-Registrar Office, Jodhpur and the Additional Collector (Agriculture Land Conversion), Jodhpur, sought by the respondent no.1/plaintiff and *secondly*, the non-impleadment of the Sub-Registrar Office, Jodhpur and the Additional Collector (Agriculture Land Conversion), Jodhpur, would not render the decree ineffective.

11. It is also seen that the Hon'ble Apex Court in the the case of **Gurmit** (supra) has also considered the principle of **dominus litis** and held that the plaintiff, being the dominus litis, cannot be forced to add parties against whom he does not want to contest unless there is a compulsion of rule of law. The relevant para of the judgement passed by the Hon'ble Apex Court in the case of **Gurmit** (supra) is reproduced as under:

"That thereafter, after observing and holding as above, **this Court further observed that in view of the principle that the plaintiff who has filed a suit for specific performance of the contract to sell is the dominus litis, he cannot be forced to add parties against whom, he does not want to fight unless it is a compulsion of the rule of law.** In the aforesaid decision in the case of Kasturi(supra), it was contended on behalf of the third parties that they are in possession of the suit property on the basis of their independent title to the same and as the plaintiff had also claimed the relief of possession in the plaint and the issue with regard to possession is common to the parties including the third parties, and





therefore, the same can be settled in the suit itself. It was further submitted on behalf of the third parties that to avoid the multiplicity of the suits, it would be appropriate to join them as party defendants. This Court did not accept the aforesaid submission by observing that merely in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract to sell because they are not necessary parties as there was no semblance of right to some relief against the party to the contract."

Therefore, taking into account the principle of dominus litis, this Court finds no force in the arguments advanced by the learned counsel for the petitioner/defendant no.1, since it is a suit filed by the respondent no. 1/plaintiff and it is exclusively his prerogative to choose the opposite parties, unless it is a compulsion of rule of law and the right to choose had been exercised by the respondent no.1/plaintiff while filing the suit, wherein the Sub-Registrar Office, Jodhpur and the Additional Collector (Agriculture Land Conversion), Jodhpur, were not impleaded as a party.

12. Thus, taking into consideration the basic premise of Order I Rule 10 of the CPC, along with the jurisprudence, this Court concurs with the finding of the learned Trial Court wherein the application filed by the petitioner-defendant no.1 under Order I Rule 10 of the CPC, has been rejected on the ground that the plaintiff/respondent no. 1 has not sought any relief from the parties, which the petitioner/defendant no. 1 seeks to implead by filing the said application (Annex.2) and that, the absence/non-impleadment of the Sub-Registrar Office, Jodhpur and the Additional Collector (Agriculture Land Conversion), Jodhpur, would



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not render the decree ineffective and therefore, this Court finds no infirmity in the order dated 08.08.2024 (Annex.3), passed by the learned Trial Court.

13. Accordingly, the instant writ petition is dismissed as having rendered infructuous. Stay application as well as all other pending applications, if any, also stand dismissed.

(DR. NUPUR BHATI),J

16-/Hanuman/-