

(1983) 03 OHC CK 0013

In the Orissa High Court

Case No : Civil Revision No. 118 of 1983

Gafur Khan and Others

APPELLANT

Vs

Government of Orissa and Another

RESPONDENT

Date of Decision : 25-03-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : AIR 1983 Ori 251 : (1983) 56 CLT 85

Hon'ble Judges : R.C. Patnaik, J

Bench : Single Bench

Advocate : Sk. Rahenoma and Md. Fahim, for the Appellant;

Final Decision : Dismissed

Judgement

R.C. Patnaik, J.—This is a revision against an order of the learned Munsif, Bhadrak, allowing the application filed by opposite party 2 under Order 1, Rule 10 Civil P. C. (for short, "the Code") for impletion as a defendant.

2. The petitioners filed Original Suit No. 38 of 1981 for correction of the record-of-rights. Their allegations were that they were the owners of the disputed property but erroneously the same had been recorded, in the name of opposite party 1.

During the pendency of the suit, opposite party 2 filed an application under Order 1, Rule 10 of the Code to be impleaded as a defendant on the allegations that the disputed property was a passage used by the members of the public and that he was a necessary party to the litigation.

3. The learned Munsif allowed the application holding that the suit land stood recorded as a public road and opposite party 2 being a resident of the locality was vitally interested in the litigation.

4. The principle governing applications under Order 1, Rule 10 of the Code and the powers of the Court in deleting an unnecessary party or adding a necessary

or proper party has been considered in a good number of cases decided by this Court.

This Court refused to accept the restricted interpretation once sought to be placed upon the provision contained in Order 1, Rule 10 of the Code. It accepted the later view of Madras High Court that a restricted interpretation that a triangular fight must be avoided and the third party could not be thrust upon the plaintiff, he being the dominus litis.

"..... involves the addition of words which we do not find in the section (Rule), namely, "between the parties to the suit", and there can be few, if any, questions which cannot be determined between the parties to the suit one way or other, and of which the determination, if they be material, will, as between the parties to the suit, not be final. On the other hand, the interpretation warranted by the terms would enable the Court to avoid conflicting decisions on the same question which would work injustice to a party to the suit, and finally and effectually, to put an end to the litigation respecting them."

A person was a necessary party without whom no effective decree could be passed. He was a proper party if his presence would enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. (See *Damodar Mahapatra v. State of Orissa* (1968) 34 CLT 956. The same view was reiterated in *Kartik Chandra Mohanty v. State of Orissa* (1968) 34 CLT 1410, in the following words:--

"The wider view that the aforesaid expression need not be confined to the questions as between the parties to the litigation lays down the correct view and third parties are entitled to make applications under this rule to be impleaded as parties to the suit....."

(Quoted from placitum).

Where execution of a decree would be rendered infructuous or would, become ultimately inexecutable by opposition of a person not a party to the suit, such person is a necessary party. The policy of the law is to avoid multiplicity of litigation. So, the provision enables the Court to add persons who are proper parties so that effectual and complete adjudication is possible. It has also been held that in determining whether or not the applicants had proprietary rights in the subject-matter of the action sufficient to entitle them to be joined as defendants, the true test lay, not so much in an analysis of what were the constituents of their rights, but rather in what would be the result on the subject-matter of the action if their rights could, be established. (See *Dolfus Miegiet Compagnie v. Bank of England* (1950) 2 All ER 605. It has also been held that the test, whether the Court had jurisdiction to add as a defendant a person whom the plaintiff did not wish to sue, was whether the order for which the plaintiff was asking in the action might directly affect the intervenor by curtailing the enjoyment of his legal rights. (See *Amon v. Raphael Tuck and Sons* (1956) 1 All ER 273. Where the plaintiff claimed that he was the owner and the intervenor

alleged that he was the owner of the right, both disputes should be tried at the same time. There cannot be a strait-jacket formula. Each case would depend upon the facts and circumstances of each case.

5. In this case, the petitioners have alleged in para. 3 of the plaint that the disputed property is not a public road and members of the public have no right over the same. Admittedly, the property has been recorded as a public road. The crucial question is whether the disputed property is being used as a public road by the members of the public. The members of the public would, therefore, have a vital interest in the litigation. The correction would, affect the rights of the public. So, the members of the public may not be necessary parties but are proper parties. Their presence would enable the Court to effectually and completely adjudicate and settle the question.

I, therefore, see no error in the order of the learned Munsif permitting opposite party 2 to be impleaded as a defendant.

6. In the result, the revision has no merit and it is accordingly dismissed. As there is no appearance on behalf of opposite party 2, there would be no order as to costs.