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**(2006) 03 AP CK 0109**  
**In the Andhra Pradesh High Court**  
**Case No : CRP No. 6601 of 2005**

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|-----------------------------|----|------------|
| Mulakalavathy and Others    | Vs | APPELLANT  |
| Suddala Narayana and Others |    | RESPONDENT |

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**Date of Decision :** 03-03-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(1), Order 1 Rule 10(2)

**Citation :** (2006) 3 ALD 358 : (2006) 2 APLJ 112

**Hon'ble Judges :** P.S. Narayana, J

**Bench :** Single Bench

**Advocate :** A. Prabhakar Rao, for the Appellant; M.N. Narasimha Reddy and Sadasiva Rao Pamulaparthi, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.S. Narayana, J.—The C.R.P. is filed by the petitioners aggrieved by the order made in LA. No. 2583/2005 in O.S. No. 987/2002 on the file of II Additional Junior Civil Judge, Warangal. The respondents are defendants in the said suit. The petitioners/plaintiffs filed the said application to implead Madadi Ravinder Reddy, the attorney and agreement-holder representing the other plaintiffs as 4th plaintiff in the said suit. The learned Judge dismissed the said application on the ground that the said proposed party has no interest in the subject-matter. Hence, the C.R.P.

2. Sri Prabhakar Rao, the learned Counsel representing the petitioners had drawn the attention of this Court to the affidavit filed in support of the application and would maintain that the self-same attorney-agreement-holder had sworn to the affidavit and had explained the reasons why he intends to come on record. The learned Counsel also pointed out to the document in question, the power of attorney, and would maintain that in the light of the same to say that he has no interest in the subject-matter definitely cannot be sustained.

3. Per contra, Sri M.N. Narasimha Reddy, the learned Counsel representing the

respondents would maintain that specific stand was taken that the proposed party is only a power of attorney - agreement holder and he has no interest in the plaint schedule property and in the light of the stand taken the dismissal of the said application is well justified.

4. Heard both the Counsel.

5. The application LA. No. 2583/2005 in O.S. No. 987/2002 on the file of II Additional Junior Civil Judge, Warangal, as stated supra, was filed by the petitioners to implead the power of attorney holder -agreement holder, Madadi Ravinder Reddy, who has been in fact representing the other plaintiffs as attorney and agreement holder, as 4th plaintiff in the suit. It was stated that the proposed party is the attorney of the petitioners/plaintiffs 1 to 3 and he had also got a registered agreement of sale with G.P.A. dated 29-4-2002 executed by them in his favour. It is further averred that he had been under the bona fide impression that he filed the suit in his name and also on behalf of his vendors especially in view of the fact that the title of the plaint schedule property had not yet been transferred to him. It was further stated that when he engaged another Counsel who filed Vakalat even on his behalf and he was informed that the bona fide impression which he was carrying may not be the correct impression and advised to rectify the said defect and the prior Counsel also it appears agreed with the said suggestion. In the said circumstances the affidavit in fact was sworn to by the said Madadi Ravinder Reddy, the power of attorney holder - agreement holder representing the plaintiffs to come on record as 4th plaintiff. The same was resisted by the 1 st respondent on the ground that the proposed party is neither a necessary nor a proper party and he is only a power of attorney holder and he does not have any interest in the plaint schedule property and the application was thought of only to delay the proceeding. The learned Judge after recording certain reasons dismissed the said application.

6. It is no doubt true that a power of attorney holder, simpliciter, not having any interest in the subject-matter of the suit and just representing the parties, may not be a necessary party to be impleaded in the suit as a party as such. In the present case that appears to be not the situation. It appears plaintiffs 1 to 3 in fact had executed the power of attorney-cum-agreement in favour of the proposed party and may be for that reason the suit itself was instituted by the plaintiffs represented by the said power of attorney - agreement holder. In view of the fact that he is not only the power of attorney holder but also the holder of agreement having interest in the property, on advice given by his Counsel, the present application was moved. The Division Bench of this Court in Chaganti Lakshmi Rajyan and Others Vs. Kolla Rama Rao, , at Para 5 observed :

Order 1 Rule 10 is the another relevant provision which enables the Court to strike out or add parties at any stage of the proceeding. Sub-rules (1) and (2) of Rule 10 of Order I read thus :

10. Suit in the 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 proceeding, 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.

Necessary parties are those who ought to have joined and without whom no order can be passed effectively as their presence is necessary for the constitution of the suit itself, in other words, without whom no effective decree can be passed. Proper party is one without whom no effective order can be made, whose presence is necessary for a complete and final adjudication of the dispute. Normally speaking plaintiff is the dominant litis, and he is the master of the suit. He can choose parties to the suit as well as forum. He cannot normally be compelled to fight against a party whom he does not wish to fight and against whom he does not seek any relief. The question of addition of parties under Order 1 Rule 10 C.P.C. mainly not one of initial jurisdiction of the Court, but clearly of judicial discretion which has to be exercised in the light of the facts and circumstances of each case. For instance, where the subject-matter of the litigation is as regards declaration of status or legal character the accepted rule of direct interest or interest in prasenti may be relaxed, provided the Court opines that by adding such a party, it would be in a position to effectively and completely adjudicate upon the controversy.

In Savitri Devi Vs. District Judge, Gorakhpur and Others, , the Apex Court held that Order 1 Rule 10, C.P.C. enables the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit and avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code. Apart from this aspect of the matter, it is not a case where a third party to the litigation or an application being moved by the defendants. But here is a case where a power of attorney holder, in a different capacity who had been on record already, wants to come on record as 4th plaintiff just to rectify the defect. Hence, the principle of dominus litis in relation to the plaintiffs also may not be applicable in the present case. The view expressed in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, , may be referred to in this

context. The test for impleading parties prescribed in *Razia Begum v. Anwar Begum* AIR 1958 SC 836 , that the person concerned must be having a direct interest in the action, may also be conveniently referred to in this context. In *Bayajabai Ganpat Vs. Keval Rambhau and Another*, , it was held that when a party is added as a co-plaintiff and the plaintiff does not dispute the right of the co-plaintiff to the decree which might be passed, but where the plaintiff disputes the right of a party to have an interest in the property which he is claiming, that party should properly be joined as a defendant and not as a co-plaintiff because it is only when he is joined as a defendant that an issue can legitimately be raised between them.

7. In view of the fact that the petitioner/proposed party is not only a power of attorney-holder but also an agreement-holder, the proposed party cannot be treated on par with the power of attorney holder, simpliciter, being an agreement-holder too and it cannot be said that such person is not having interest in the property and hence the impugned order cannot be sustained. Such party having interest in the property who is also on record in a different capacity representing the other plaintiffs is definitely a necessary party and that too when he himself has sworn to the affidavit and intends to come on record, the dismissal of the application definitely cannot be sustained. Accordingly, the impugned order is hereby set aside and the C.RP. is allowed. No costs.