

(1997) 07 RAJ CK 0015
In the Rajasthan High Court
Case No : C. Revision No. 1021 of 1997

Sumat Kumar Jain and Others	Vs	APPELLANT
Pramod Kumar Agrawal and Another		RESPONDENT

Date of Decision : 15-07-1997

Acts Referred:

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

Citation : (1998) 3 RLW 1661 : (1997) 2 WLN 85

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—The genesis of the controversy in this revision relates to the order dated July 3, 1997, passed by the learned Civil Judge (Junior Division) No. 4 Jaipur City whereby the application under Order 1 Rule 10 CPC moved by the petitioner was rejected.

2. It is well settled that the plaintiff being dominus litus cannot be compelled to fight against some other litigant not of his own choice. Order 1 Rule 10(2) is applicable to two classes of cases only. One class is where he ought to have been joined as a plaintiff or a defendant and is not so jointed. That is a case of necessary party. The other class is where without the presence the questions in the suit cannot be effectually and completely decided. The court has no power to join as a party who claims to belong to this class unless it is prima facie satisfied about the plausibility of his claim. Rule 10(2) can not be read as requiring all persons who choose to lay claim to any sort of right, title or interest in respect of subject of a suit to be made a party.

3. It is in this background that I shall proceed to scan the order impugned.

4. The plaintiff non-petitioner No. 1 instituted a suit for permanent injunction against the (defendant Municipal Corporation (non-petitioner No. 2) seeking relief that he be not dispossessed by the Municipal Corporation without due process of law. Indisputably the suit is the off shoot of the writ petition filed by

the petitioner, a reference of which has been made in para No. 4 of the plaint. In the application under Order 1 Rule 10 CPC the petitioners averred that they have direct interest in the suit and their presence is necessary for the effective and just decision in the suit. It is on the basis of their complaint that the Commissioner Municipal Corporation, after investigation passed the order on Sept. 6, 1995 to remove the encroachment from public foot path.

5. Mr. Kamlakar Sharma learned Counsel appearing for the petitioners canvassed that the petitioners are necessary parties and they ought to have been impleaded as defendants in the suit. Mr. K.K. Sharma, learned Counsel placed reliance on *Samad Khan v. Mushtaq Ali* 1995 4 1995 where this Court directed to implied the person in the suit, who made complaint in respect of disputed construction. The suit was brought by the plaintiff seeking relief that Municipal Corporation be restrained from demolishing the construction.

6. Mr. Alok Sharma, learned Counsel appearing for the plaintiff non-petitioner No. 1 on the other hand supported the impugned order. Learned Counsel placed reliance on *Girdhari Lal v. Nagar Parishad* 1987 (2)(R.L.R.462) where this Court propounded that a person who feels that he will be in a position to defend the suit in better manner than the municipality, cannot be impleaded as party in the suit.

7. I have given my anxious consideration to the rival contentions and carefully scrutinised the record.

8. No doubt that the petitioners have filed the writ petition in the public interest impleading many parties including the plaintiff Pramod Kumar Agrawal, but a close look at the plaint reveals that the questions in the suit can be effectively and completely decided without impleading the petitioner as defendants. The plaintiff being dominus litus cannot be compelled to contest the suit against the litigants not of his own choice. I am of the considered view that the petitioners are neither necessary nor proper parties in the suit. The relief sought in the suit is against the Municipal Corporation only and involve the interpretation of the question as to what is the due process of law ?

9. So there is no jurisdictional error in the order impugned and if it is allowed to stand it would not occasion failure of justice. But looking to the above noted peculiar facts, I am of the considered opinion that provisions contained in order 1 Rule 8A of CPC are attracted in this case. Rule 8A was inserted in order to empower the court to permit a person or body of persons interested in any question of law in issue in any suit to present his or its opinion, before the court and to take part in the proceedings in the suit. Rule 8A provides thus:

8-4. Power of court to permit a person or body of persons to present opinion or to take part in the proceedings:--While trying a suit, the court may, if satisfied that a person or body of person is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on

that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the court may specify.

10. In Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, their Lordships of the Supreme Court allowed petition of Hindi Sahitya Sammelan for intervention and gave full opportunity to it to give oral submissions though interveners are not entitled to address oral submissions. In that case Notification for acquisition of land for Hindi Sahitya Sammelan was challenged on the ground that it was actuated by ulterior motive, without impleading Sammelan as party.

11. The petitioners in the public interest are entitled to be heard on the questions of law involved in the suit.

12. Consequently, while upholding the impugned order I dispose of this revision, directing the trial court to allow the petitioners to present their opinion on the questions of law involved in the suit under the provisions contained in order 1 Rule 8A of the Code of Civil Procedure. The record of the case be sent back forthwith. The parties are directed to appear before the trial court on July 22, 1997. Costs easy.