

ORDER BELOW EXHIBIT- 68

The present application is filed by aggrieved party Swamini Omkaranandji Mataji to add her to the present suit. The main reason mentioned in the application is that the Defendant of the present suit Narottamdas Tribhuvandas Patel has expired and the present applicant is the apparent successor of Late. Narottamdas since 06-02-2008.

The plaintiff has filed his reply vide Exh: 76 and stated that the present application is frivolous and of no merit. The reply states that Swamini Omkaranandji Mataji also possesses one Ashram at Uttarsanda therefore has no relation with Gyan Prachar Ashram.

Heard both the parties and their Ld. Advocates. Perused the case record.

Amongst the various documents produced the document produced at Mark 78/5 appears to be a letter bearing sign of Late defendant Narottamdas to the present applicant in which it is stated that the present applicant has been appointed as the successor of Shri Gyan Prachar Ashram, Vallabh Vidhyanagar, Anand. The other documents produced with the application are invites at Mark 78/1, 78/2 and some photographs at Mark 78/3 & 78/4 which apparently show the involvement of applicant in the activities of Ashram.

Ld. Advocate for applicant has mainly argued that the applicant is a necessary party and should be added in the present suit so as to decide the suit on just and proper grounds. He has further argued that since the present applicant is the successor of the ashram he should be added in the suit as defendants. Ld. Advocate for Plaintiff has argued as per the reply filed and has stated that the present application is file don frivolous grounds and has no merit.

It is well established that in order to reach to a just conclusion in a suit, all the necessary parties must and proper parties should be joined in the suit so that the case is decided effectively and judiciously. This is also because

of the fact that if the parties who do or may have interest are not joint, it may give rise to multiplicity of proceedings and unending litigations amongst them. At this point it may be relevant to quote the judgment produced by Ld. Advocate for the applicant of Hon'ble Madras High Court ***C.M.V. Krishnamachari V. M.D Dhanalaxmi Ammal & Ors. AIR 1968 Mad 142***, which appears to be applicable to the present case. Similarly in ***Vyidianadayyan v. Sitarama (1882) ILR 5 Mad 52*** it was stated " a material question common to the parties and third parties should be tried once for all". In the case of ***Anjaneya Shastri v. Kothandapani AIR 1936 Mad 449*** it was held that the principles of avoiding multiplicity of suits not merely to avoid waste of time and money but also prevent possible conflict of decisions and that to justify the impleading of a party it is not necessary that he should be interested in all the reliefs or all the questions arising between the plaintiff and the other defendants.

In ***Mahadeva Rice & Oil Mills Vs. Chennimalai Gounder reported in AIR 1968 Mad. 287***, the Hon'ble Madras High Court, explained shortly but vividly the basic object of the provision Order 1 Rule 10 C.P.C., and laid down the following principles:-

1. If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded.
2. It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subjectmatter which could still have been decided in the pending suit itself;
3. The proposed party has a defined, subsisting, direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognisable in law;

In ***Antony Devaraj v. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula, Annai Church rep by the Trustee,***

reported in 2004(2) C.T.C. 183 the Hon'ble Madras High Court considered the right of a third party to claim addition of party. It was held as follows:- *“(iii). The person to be added as one of the parties 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, but it should make him a necessary witness. (iv). The third party cannot be considered to be a necessary party for deciding the main issue framed in the suit. Mere ground that inclusion of the proposed third party would not alter the structure of the suit may not entitle the party to ask the Court to implead the third party as a defendant. (v). The Court may upon an application or suo motu, in a fit and proper case, implead a new party as defendant, even against the plaintiff's consent under certain circumstances. The discretion vested with the Court though wide is however circumscribed by the limitations which are built in the provisions contained in Order 1 Rule 10(2), C.P.C. Where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party. If the question at issue between the parties can be worked out without anyone else being brought in, the stranger should not be added as a party. (vi) A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit. (vii) Persons whose interest would be affected by the litigation are entitled to come on record to protect their interest when those are jeopardized by the persons already on record”*

In **Mumbai International Airport vs., Regency convention Centre reported in 2010 (5) ALD (SC) = AIR 2010 SC 3109** the **Hon'ble Apex court** gave some illustrations regarding exercise of discretion for adding of parties as follows:- *“ 1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, 6 the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order I. If the claim against such a person is barred*

by limitation, it may refuse to add him as a party and even dismiss the suit for nonjoinder of a necessary party. 2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession. 3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit. 4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonfides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms.”

Order 1 Rule 10 (2) of CPC states that :

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.

The phrase “adjudicate upon and settle all questions involved in the suit” is of significance here. Looking into the above discussion, I am of the view that in the present case, the applicant *prima facie* appears to be a necessary party to the suit.

Hence the following order is passed:

ORDER

The present application hereby stands allowed.

The applicant be impleaded as defendant in the present case. The plaint be amended accordingly.

Date: 05-04-2022

Place: Anand

(R.V. Johari)

3rd Addl. Civil Judge, Anand.