



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**C.M.P. No. 737 of 2025**

(In the matter of an application under Article 227 of the Constitution of India)

***Rajalaxmi Sahu***

....

***Petitioner***

*-versus-*

***Tarini Prasad Rath & Anr.***

....

***Opposite Parties***

Advocate(s) appeared in this case:-

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For Petitioner : Mr. K.K.Mishra, Advocate

For Opposite Parties : Mr. G.Mishra, Senior Advocate

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**CORAM: JUSTICE B.P. ROUTRAY**

**JUDGMENT**  
***9<sup>th</sup> October 2025***

***B.P. Routray, J.***

1. Heard Mr. K.K.Mishra, learned Advocate for the Petitioner and Mr. G.Mishra, learned Senior Counsel for Opposite Parties.

2. Present Petitioner is the Applicant in a petition under Order 1 Rule 10 CPC praying to implead her as a party in the



suit between present Opposite Parties 1 & 2 as Plaintiff and Defendants respectively in C.S. No.217 of 2019 pending before learned Senior Civil Judge (LR & LTV), Berhampur.

3. The Plaintiff filed the suit praying for a decree for recovery of possession with further prayer against the Defendant to vacate the house and deliver the possession thereof to the Plaintiff. The Defendant filed her written statement contesting the suit. The suit proceeded and presently is at the stage of evidence adduced from the side of the Plaintiff. The Plaintiff has already examined two witnesses on his behalf. At this stage present Petitioner claiming to be in possession of part of the suit house filed a petition under Order 1 Rule 10 of CPC praying to add her as Defendant No.2 granting an opportunity to contest in the suit. Said prayer of the Petitioner has been refused by the Trial Court on the ground that the Petitioner is neither a necessary nor a proper party to the suit.

4. Mr. K.K.Mishra, learned counsel for the Petitioner submits that considering the possession of the Petitioner in a portion of the suit house, where the Plaintiff has sought for recovery of possession, certainly her right is going to be affected



in the event the decree is passed in favour of the Plaintiff. It is further submitted that according to the Defendant and present Petitioner there was an oral sale between Defendant and Petitioner's mother in the year 2018 for consideration of Rs.50,000/-.

5. Conversely, Mr. G.Mishra, learned Senior Counsel submits that even if the possession of present Petitioner is established in a portion of the suit house then also her right is not going to be affected in the event the decree is passed in favour of the Plaintiff. According to Mr. G.Mishra, learned Senior Counsel for the Opposite Parties, the Plaintiff in her wisdom did not choose to implead present Petitioner as a party in the suit and thereby taking the risk of the fact that the decree would not be binding on present Petitioner.

6. The principles for impleading a party to the suit has been well discussed in *Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.*, (2010) 7 SCC 417. It has been held that:-

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the



persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

“10. (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.”

**14.** The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the



discretion to add as a party, any person who is found to be a necessary party or proper party.

**15.** A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

**Xx .. xx ....**

**18.** In *Kasturi* [(2005) 6 SCC 733] this Court reiterated the position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance. This Court held that necessary parties are those persons in whose absence no decree can be passed by the court or those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings; and that proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

**Xx .. xx .. ..**



**23.** This Court in *Ramji Dayawala & Sons (P) Ltd. v. Invest Import* [(1981) 1 SCC 80] reiterated in SCC p. 96, para 20 the classic definition of “discretion” by Lord Mansfield in *R. v. Wilkes* [(1770) 4 Burr 2527 : 98 ER 327 : (1558-1774) All ER Rep 570] (ER p. 334) that “discretion”

“when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague, and fanciful; but legal and regular.”

**24.** We may now give some illustrations regarding exercise of discretion under the said sub-rule.

**24.1** If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order 1. 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 non-joinder of a necessary party.

**24.2** 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 insofar as the prayer for actual possession.

**24.3** 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.

**24.4** If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides, 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 the 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. For example, if *D* claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of *P* representing that he is the co-owner with half-share, and *P* files a suit for specific performance of the said agreement of sale in respect of the undivided half-share, the court may permit the other co-owner who contends that *D* has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the defendant vendor to be decided in an independent proceeding by the other co-owner, or the plaintiff;



alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject-matter of the suit for specific performance, and that it will decide in the suit only the issues relating to specific performance, that is, whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.

25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.”

7. In *Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya*, (2017) 9 SCC 700, it is observed as follows:-

“16. XXXX .. xx .... It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add anyone as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1 Rule 10(2) of the Code will



of course act according to reason and fair play and not according to whims and caprice.

17. The expression “to settle all questions involved” used in Order 1 Rule 10(2) of the Code is susceptible to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject-matter thereof. Parliament in its wisdom while framing this rule must be held to have thought that all material questions common to the parties to the suit and to the third parties should be tried once for all. The Court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any dispute that the party impleaded must have a direct interest in the subject-matter of litigation. In a suit seeking cancellation of sale deed, as mentioned supra, a person who has purchased the property and whose rights are likely to be affected pursuant to the judgment in the suit is a necessary party, and he has to be added. If such purchaser has expired, his legal representatives are necessary parties.”

8. In *Sudhamayee Pattnaik & Ors. vs. Bibhu Prasad Sahoo & Ors.*, (2022) 17 SCC 286 it has been observed as follows:-

“9. At the outset, it is required to be noted that the defendants in the suit filed application under Order 1 Rule 10 CPC and prayed to implead the subsequent purchasers as party defendants. The suit is for declaration, permanent injunction and recovery of possession. As per the settled position of law, the plaintiffs are the dominus litis. Unless the court suo motu directs to join any other person not party to the



suit for effective decree and/or for proper adjudication as per Order 1 Rule 10CPC, nobody can be permitted to be impleaded as the defendants against the wish of the plaintiffs. Not impleading any other person as the defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs.”

9. It is true that the Defendant while filing her W.S. did not claim title over the property and her counter claim is limited to protection of her shared possession in the suit house. When the Defendant did not claim her right title over the suit property, the plea taken on the part of present Petitioner regarding oral sale does not display a prima facie case in her favour to be added as a party. So far regarding her claim of her possession in the suit house that is also admittedly derived from the right of Defendant is to be decided finally in the suit. Thus even considering the Petitioner’s case, as a possessor in part of the suit house, in view of the nature of prayer of the Plaintiff which is regarding recovery of possession, the same would not create any right in favour of present Petitioner to be heard in the present suit. Moreover, as per the submission of Mr. G.Mishra, learned



Senior Counsel that when the Plaintiff is choosing in his discretion not to make present Petitioner as a party being aware of her claim towards possession, the risk is on the part of the Plaintiff. Therefore, in the given facts of the present case, present Petitioner is not considered as a necessary or proper party to be impleaded in the suit or she would have a right to be heard therein.

**10.** In the result, no infirmity is found in the impugned order and the CMP is dismissed.

***(B.P. Routray)***  
***Judge***

*S.Das/Sr.Steno*