

Court No. - 88

Case :- ORIGINAL SUIT No. - 7 of 2023

Plaintiff :- Shri Bhagwan Shrikrishna Lala Virajman And 4 Others

Defendant :- U.P. Sunni Central Waqf Board 3a And 3 Others

Counsel for Plaintiff :- Amit Kumar, Anil Kumar Singh, Anil Kumar Singh Bishen, Damodar Singh, Devendra Vikram Singh, Leena Srivastava, Mahendra Pal Singh Gaur, Manish Kumar, Naman Kishor Sharma, R.U. Rinki Renu, Rana Singh, Sachin Singh, Satya Pal, Suman Srivastava, Sunil Singh, Vivekanand Yadav

Counsel for Defendant :- Afjal Ahmad, Hare Ram, Nasiruzzaman, Pranav Ojha, Punit Kumar Gupta

Hon'ble Ram Manohar Narayan Mishra, J.

1. An impleadment application Paper No. **30-A** has been filed under Order 1 Rule 10 CPC in present suit on behalf of Shriji Radha Rani as party to present suit through next friend Ms. Reena N Singh.
2. This case was originally instituted in the court of Civil Judge (S.D.) Mathura as Original Suit No. 317 of 2022 but subsequently it was transferred to this Court on 26.5.2023 alongwith 14 other civil suits in respect of subject matter in dispute and all suits are consolidated by order of this Court and Suit No. 01 of 2023 has been treated as leading case. The instant civil suit has been filed by Shri Bhagwan Shrikrishna Lala Virajman through next friend Sri Kaushal Kishor Thakur alias Kaushal Singh Tomar Madhav Vilas, Manas Seva Sangh Ashram Vrindavan, Mathura and 4 others against U.P. Sunni Central Waqf Board, Management Committee, Shahi Eidgah Masjid Trust Digi Gate, Katra, Mathura and 2 others on 12.4.2023. At the stage of commission proceedings, the case was transferred to this Court. In this original suit it is pleaded that Sri Krishna birth place temple situated in Mathura which has been encroached since the year 1669-70 and this suit was filed to remove illegal encroachment in premises of Sri Krishna birth place temple which is now known as Shahi Eidgah Masjid (erstwhile Jama Masjid). The plaintiffs have cited travelogue of French traveller and businessman Jeans Baptist Tavernior who is stated to have visited India for six times between 1630-68 and also four report of ASI made during the year 1862-63-64-65, volume-I in which a map of Katra Keshav Rai Mandir which was laid on

octagonal platform. The plaintiffs have pleaded various authorities in support of their pleadings in original suit.

3. According to plaintiffs, Sri Krishna Janmsthan Mandir is a protected monument under ASI vide notification issued in the year 1920. Sri Krishna Janmsthan temple was demolished by Mahmood Ghaznavi in the year 1017 and it was rebuilt by Rastrakoot Ruler of Kannauj in the year 1206 which was again demolished by Sikandar Lodhi around Samvat 1573 and it was again rebuilt on octagonal platform by the king of Orchha Maharaj Veer Singh Bundela in Samvat 1675 but in samvat 1727 Mughal ruler Aurangzeb demolished the temple and took illegal possession thereon and it was being used as mosque.

4. In nutshell, the plaintiffs have pleaded that at present Shahi Idgah Masjid building has been constructed on original structure of Sri Krishna Janmsthan temple, it was a divine place which is being used as a mosque and lying under the possession of Muslim community; the total area of encroachment is 13.37 acre. In paragraph 48 of the plaint, notification dated 25.11.1920 issued by archaeological department of Govt. of India is mentioned, which reads as under:

“Portions of Katra mound which are not in the position of Nazul tenants on which formerly stood a temple of Keshvadeva which was dismantled and the site utilized for the mosque of Aurangzeb.”

5. This site situates in district Muttra (Mathura). It is also averred in the plaint that on 29.12.2022 plaintiff no. 5 Ajay Pratap Singh, President, Yogeshwar Sri Krishna Janmsthan Seva Sangh Trust moved online application under RTI Act wherein particulars of title of Shahi Idgah Masjid were sought from the revenue department but Public Information Officer has not replied the same. The applicant filed First Appeal under RTI Act and then it was replied that said property is recorded in Khasra No. 825, Khevat No. 255 but no property is recorded in the name of Shahi Idgah in the revenue record. It was also informed under RTI Act that at the time of Wakf registration, Shahi Idgah Management Committee did not file any title papers. The plaintiffs have sought declaratory decree against the defendant to the effect that the plaintiffs be declared as owners of property in suit which is shown in site plan appended at the foot of the plaint and denoted by letters Aa, Ba, Sa, Da. The plaintiffs have also sought delivery of possession of said suit property from the defendants. They

also sought permanent injunction in their favour against the defendant to the effect that in suit property which consists of Sri Krishna Janmsthan (so called Shahi Idgah Masjid) that defendant be refrained from raising any change in present structure of suit property and refrain from changing its characteristic and they be enjoined from interfering in staging any religious congregation (Ayojan) in temple campus. Thus plaintiffs have claimed title over property in suit on which Shahi Idgah Masjid situates at present on the ground that originally this complex belong to Sri Krishna Janmsthan and it was demolished and rebuilt many times by various rulers.

6. The impleadment application under order 1 Rule 10 CPC has been filed on 15.11.2023 by Sri Anil Kumar Singh Bishen advocate in present suit with prayer to implead Shriji Radha Rani Vrishbhanu Kumari Vrindavani through next friend Reena Nehru @ Reena N Singh, resident of Gurugram, Haryana and allowing the applicant to be arrayed as party petitioner to the original suit No. 7 of 2023. On 6.5.2025 this Court heard and passed the following order:-

“1. Heard Ms. Reena N Singh, in person for the applicant Radha Rani and Sri Ajay Pratap Singh and Sri Anil Kumar Singh in support of their objection on application in impleadment moved on behalf of Radha Rani. Sri Kaushal Kishor Thakur @ Kaushal Singh Tomar who is mentioned as next friend as plaintiff no. 1 is present in the court and clarified that he has no objection on impleadment application. However, Sri Ajay Pratap Singh and Sri Anil Kumar Singh, advocate for plaintiff no. 2 to 5 submitted that Sri Kaushal Singh Tomar has no longer member of the trust and he has no locus standi to continue as next friend of plaintiff no. 1 and an application for his removal as next friend is pending.

2. Ms. Tasneem Ahmadi advocate appeared for respondent no. 2 specified that her objection is with regard to limitation and it is to be seen that whether claim of Radha Rani to be impleaded as party is time barred or not and she referred section 21 of the Limitation Act in this regard.

3. Sri Hare Ram Tripathi, learned counsel appearing for Sri Krishna Janm Bhumi Trust pressed his objection on application for impleadment as stated earlier.

4. List on 23.5.2025 at 2:00 pm for orders”

7. It is contended by learned counsel for the applicant Shriji Radha Rani that the applicant is legal wife of the petitioner Sri Bhagwan Krishna Lala Virajman Janmsthal, Digi Gate, District Mathura and both parties were married on Phulera Dooj second day of Phalgun Shukla Paksha at Bhandirvan in Mant Tehsil of Mathura as mentioned in Chapter Fifteen of Brahma Vaivarta Purana. The applicant and the Petitioner are worshipped as DEITIES since time immemorial. The Petitioner was born on the site/ place named as Katra Keshav Dev, the applicant and petitioner are DEITIES and are holding the said land comprising 13.37 acre under the ownership of the petitioner and the applicant. Both the petitioner and applicant are incomplete without each other since time immemorial as applicant is divinely mentioned as half part of the petitioner. The defendants with the help of their people have encroached upon the land of applicant and the petitioner resultant to which the access to the devotees of the deities is stopped and denied due to trespass and encroachments of the area around the deities. The walls, pillars of the structure where the petitioner was born was dissembled, dispersed by disfiguring and damaging, hiding and reshaping the crafted Hindu images on the walls of our temple where we are living. Both the DEITIES are isolated since several centuries and are waiting to be reunited with the devotees. The site holds cultural importance as according to Hindu scriptures like Brahma Vaivarta Purana and Garga Samhita, Shriji Radha Rani and Lord Krishna got married in Bhandirvan forest in the presence of Lord Brahma at Mant Tehsil of District Mathura, Lord Brahma is the creator, who also became the priest and solemnized their wedding ceremony. This wedding ceremony is annually celebrated on the occasion of Phulera Dooj in the month of February - March. Bhandirvan is listed as one of the sacred forests of Braj region. Inside the premises of Bhandirvan, there is Radha Bhandir Bihari temple where Krishna is seen putting the Sindoor on Radha's forehead which symbolises a significant marriage ritual in Hindu wedding ceremony.

8. The applicant is herself a DEITY and is the feminine form of petitioner Bhagwan Shrikrishna Lala Virajman, as mentioned in Narada Pancharatra Samhita, Radha is mentioned as the feminine form of Krishna. It is described that, the one single lord is represented

to have become two - one a woman and the other a man. Krishna retained his form of man while the female form became Radha. Radha is said to have come out from primordial body of Krishna, forming his left side, and is eternally associated with him in his amorous sports in this world as well as the world of cows, Goloka. In Brahma Vaivarta Purana, Radha (or Rādhikā), who is inseparable from Krishna, appears as the main goddess. In this world, Krishna and Radha relate to one another in the way body relates to the soul. According to Krishnaism, Radha is the chief female deity and is associated with Krishna's maya (material energy) and prakriti (feminine energy). At highest level Goloka, Radha is said to be united with Krishna and abiding with him in the same body.

9. The applicant is the necessary party and without her impleadment, complete justice cannot be done. This application is guided by the equitable principle to ensure fairness and justice and efficient resolution of the dispute. The applicant is entitled as joint holder of the said land of 13.37 acres alongwith dissembled temple structure standing on Octagonal Platform, Chaturbuja Platform which is encroached and given the name of Masjid Shahi Idgah by the defendants. In the present suit the applicant and the petitioner both are DEITIES whose property is trespassed and encroached by the defendants and defendants are presently in unauthorized possession of the property which has isolated the deities sitting in the dissembled temple structure at Katra Keshav Dev. The applicant is a necessary and proper party which requests to be impleaded in the present suit. The discretion to either allow or reject an application for impleadment moved by a person is required to be exercised according to settled principles of law and reasons and fair play. The object of order 1 Rule 10 of CPC, is to bring before the court all persons at the same time who are involved in the dispute relating to the subject matter so that the disputes may all be determined at the same time without delay, inconvenience and expenses on separate actions and trials. Mathura, which is associated with Krishna is treated a holy city by Hindu scriptures. In the Skanda Purana also Radha Rani is termed as Krishna's soul. In Brahmanda Purana also mentions of Radha Rani and Lord Krishna's arrival together from Goloka to appease Parvati when Lord Shiva chopped off head of lord Ganesha. Similarly in a number of scriptures and Purana mentioned in the application, reference of Radha Rani is found.

10. The application is supported with affidavit of Sri Anil Kumar Singh Bishen advocate who has verified the pleading on behalf of the applicant which sought to be arrayed by next friend Ms. Reena N Singh. Some photographs of idols Radha Krishna installed at various temple are also filed alongwith the application.

11. Written reply and arguments are filed on behalf of the plaintiffs to counter the application for impleadment moved on behalf of proposed applicant Shriji Radha Rani.

12. Learned counsel for the plaintiffs no. 2 to 5 Sri M.P. Singh Gaur submitted that plaintiff no. 1 is in the capacity of minor in present suit. The averment in the application for impleadment are against the plaintiff averment and facts will destroy nature and structure of the suit. The plaintiff is dominus litis and unless it is held that the applicant is necessary party to the suit it cannot be impleaded without consent of the plaintiff. In paragraph -19 of the plaint, Rukmani is described as wife of lord Krishna who married her at the age of 31 in Dwarka 3097 Vikram Samvat Poorva. The area of 13.37 acre of disputed land is not essential fact of Suit No. 7 of 2023. The premises of lord Sri Krishna temple which laid on octagonal platform of 804 feet in length and 653 in breadth has given in four reports made by ASI during 1862-63-64-65 and total area is 5,25,012 sq. feet which is equal to 12.05 acres. The essential fact of Suit No. 07 of 2023 is shows as dismantled temple of lord Krishna which is currently standing on 12.05 acre land and this temple is birth place of lord Krishna.

13. Learned counsel further submitted that Radha Rani has already filed a fresh suit before the Civil Judge, (SD) and a transfer application is pending before this Court. The said suit has been filed through next friend of plaintiff no. 1 of present suit and that suit is numbered as Civil Suit no. 62 of 2024 and Radha Rani is positioned as plaintiff no. 4 in that suit and a copy of the plaint is filed as Annexure-2 to the written arguments on Application 30-A from the plaintiffs no. 2 to 5. He lastly submitted that this suit was filed for removal of encroachment and superstructure from the land of the consecrated deity at the birth place of Bhagwan Sri Keshavadev, illegally raised by Committee of Management of alleged Trust Masjid Idgah and Sunni Central Board of Waqf on land Khewat No. 255 at Katra Keshav Dev City of Mathura which belongs to deity Sri Krishna Virajman. Radha Rani who is impleaded as plaintiff no. 4 in OS No. 62/2024 has prayed in the suit to pass an order to remove / demolition the construction of premises whereas in present suit there is no prayer

of removal or demolition of superstructure. The suit relates to birth place of Sri Krishna. There is no right of Radha Rani in the birth place of lord Sri Krishna and all questions of the suit can be decided without impleadment of Radha Rani. She is not necessary party to the suit and a decree can be passed in her absence.

14. The averments made on behalf of Radha Rani in present impleadment application and in OS No. 62/2024 are self contradictory and cannot be adjudicated in present suit. The next friend of Radha Rani and next friend of plaintiff no. 1 both are teamed up and are suppressing the true facts and therefore Hon'ble Court is prayed to protect the rights of minor plaintiff no. 1 and impleadment application moved on behalf of Radha Rani should be rejected.

15. He lastly submitted that the impleadment of third party Radha Rani will alter structure of the suit and will raise new cause of action in this original suit. Learned counsel for the plaintiffs placed reliance on judgement of Hon'ble Supreme Court in **Mumbai International Airport (P) Ltd. vs. Regency Convention Centre and Hotels (P) Ltd, (2010) 7 SCC 417** wherein Hon'ble Supreme Court held as under:

“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 disputes 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.”

16. 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 Madras High Court considered the right of a third party to claim addition of party. It was held in para (v) as follows: -

“Where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party.”

17. Learned counsel also placed reliance in **Kasturi vs., Uyyamperumal and others reported in (2005) 6 SCC 733**, the Hon'ble Apex Court observed in para number 6 that "it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are-(1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings. (2) no effective decree can be passed in the absence of such party."

18. Hon'ble Supreme Court in **Shyam Sunder Prasad Singh & Ors vs State of Bihar & Ors 1981 AIR 178, 1981 SCR (1) 1**, held that -"While interpreting the Smritis one difficulty which has to be encountered is the uncertainty about their chronology. Another difficulty felt by many jurists while interpreting them is the existence of conflicting texts, sometimes in the same Smriti."

19. The provisions of Order 1 Rule 10 CPC are produced as under;

“(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 thought 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 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. ”

20. Hon'ble Supreme Court in **Vidur Impex & Traders Pvt. Ltd. & Ors vs Tosh Apartments Pvt. Ltd. & Ors** held that “The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who

ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit. ”

21. Order 1 Rule 1 of CPC provides as under:

“ **1. Who may be joined as plaintiffs.-** All persons may be joined in one suit as plaintiffs where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.”

22. Order 1 Rule 3 of CPC read as under:

“**3. Who may be joined as defendants.-** All persons may be joined in one suit as defendants where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.”

23. Hon’ble Supreme Court in *Ramesh Hiranand Kundanmal vs Municipal Corporation Of Greater*, 1992 SCC (2) 524, considered the ambit and scope of Order 1 Rule 10 CPC and held that plaintiff is no doubt dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. The question of impleadment of a party has to be decided on the touch stone of Order 1 Rule 10 of the Code of Civil Procedure, 1908, which provides that only a necessary or a proper party may be added. In the light of the clear language of the Rule, it cannot be said that a person cannot be added as defendant even in a case where his presence is necessary to enable the Court to decide the matter effectively. A necessary party is one without whom no order can be made

effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case. The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the Rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order, which is to avoid multiplicity of actions. A clear distinction has been drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the Commercial interest is required to be shown before a person may be added as a party.

24. In the present suit, the applicant has failed to show a cause of action regarding subject matter in the suit, although next friend of plaintiff no. 1 has not objected to the impleadment application, yet the other plaintiffs have raised strong objection on application for impleadment which is under consideration. An application for removal of next friend of plaintiff no. 1 has also been moved by the plaintiff nos. 2 to 5 which is pending in the suit. The applicant failed to show some right to relief in present suit in respect of the controversies involved in the suit against parties to the suit.

25. This is settled legal proposition that a deity is considered perpetual minor and it can sue through next friend or it can be sued while appointing a guardian. Order XXXII provides for suits by or against minors and persons of unsound mind. Rule 1 provides that every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. Rule 3 provides that where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest

in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

26. Rule 5 provides that every application to the Court on behalf of a minor, other than an application under Rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit. Rule 9 provides for procedure of removal of next friend.

27. The present applicant has prayed for impleadment and to be arrayed as a party petitioner (plaintiff) to original suit No. 7 of 2023 so that relevant facts could be brought on record and according to the applicant, no harm, loss or injury would be caused to the parties to the instant petition if the applicant is permitted to come on record and place all relevant facts and material which are necessary for the proper adjudication of the issues raised in the present suit.

28. In paragraph-7 of the application it is stated that applicant is entitled as joint holder of the said land of 13.37 acres alongwith dissembled temple structure standing on Octagonal platform, Chaturbuja platform which is encroached and given the name of Shahi Idgah by the defendants. In the present suit, the applicant and petitioner both are deities whose property is trespassed and encroached by the defendants and defendants are presently in unauthorized possession of the property. The applicant Shriji Radha Rani is a necessary and proper party which requires to be impleaded in the present suit.

29. The claim of the applicant as a joint holder of property in dispute together with plaintiff no. 1 is based on some reference in various Purans and Sanhitas wherein Shriji Radha Rani is considered as soul of lord Krishna. The Pauranic illustrations are generally considered as hearsay evidence in legal context. In the case of Pauranic illustrations, these are graphic representation of story and events and truth of events, they depict, is usually based on narrative and not on direct observation or testimony. There is no evidence in support of the claim raised by the applicant that the applicant is entitled as joint holder of said land of 13.37 acres and property of the applicant is also involved in suit property claimed by the plaintiff no. 1 as birth place of lord Krishna. Present suit has been filed with regard to property in question which is claimed by plaintiffs as birth place of lord Krishna which is presently in possession of Shahi Masjid Idgah. This Court finds force in the objection raised by some of the parties to the suit in regard to impleadment application filed on behalf of Shriji Radha Rani on

considering the ground taken in application on touchstone of law with regard to necessary and proper party as stated above. There is no averment in the impleadment application that there was a temple of Radha Rani in the property in dispute.

30. The applicant is neither being found necessary nor proper party to the suit and it is not expedient to implead her as party to the suit. The applicant who has sought to be impleaded as party to the suit could not demonstrate any evidence or binding authority in support of her claim in the subject matter of the suit which is claimed by the plaintiffs as birth place of lord Krishna and which is at present site of Shahi Idgah Masjid. It is needless to mention that basis of impleadment of the applicant in the application is mainly based on faith and Pauranic illustrations. However, if in future the applicant comes with any concrete evidence in support of claim that the applicant was joint holder of the suit property, the question of impleadment may be considered at the appropriate stage.

31. With above observations, the impleadment application is **dismissed**.

32. List this suit on 4.7.2025 at 2:00 pm alongwith leading OSUT 01 of 2023.

Order Date :- 23.5.2025

Dhirendra/