

**(2006) 03 AHC CK 0247**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 15478 of 2006

Girraj Singh

APPELLANT

Vs

Brijesh Goswami and Others

RESPONDENT

**Date of Decision:** March 22, 2006

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10
- Constitution of India, 1950 - Article 226

**Citation:** (2006) 4 AWC 3527 : (2006) 2 RD 142

**Hon'ble Judges:** Umeshwar Pandey, J

**Bench:** Single Bench

**Advocate:** Pankaj Bhatia, for the Appellant; Rahul Sahai, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

Umeshwar Pandey, J.

Heard learned Counsel for the parties.

2. The petitioner's application as third party for being impleaded as plaintiff in the suit was dismissed by the trial court, and his revision before the District Judge was also dismissed.

3. The learned Counsel appearing for the petitioners contends that he along with the plaintiff jointly resides in a premises about which the suit for temporary injunction against respondent defendant, was refused, Subsequent to the filling of the suit, the petitioner's brother became disinterested and Therefore, occasion arose for the petitioners to move the Court under Order I, Rule 10, C.P.C. for being impleaded as plaintiff. That prayer of the petitioner was opposed by the present plaintiff/respondent No. 6

4. The learned Counsel for the petitioner contends that in order to avoid multiplicity of the suit, the prayer of the petitioner should have been accepted by the court

despite the fact that the respondent No. 6 was opposing the prayer.

5. It is true that the aforesaid provision of Order I, Rule 10, C.P.C. Provides for impleadment of the third party either as plaintiff or as defendant in a suit. But Than the circumstances under which the petitioners moves the court for such impleadment has to be weighed by the court before it passes order and the order should not be against the general policy prevailing in such matters. The present plaintiff in the suit is not agreeable to petitioner♦s joining as plaintiff. Therefore, a third party cannot be put upon such plaintiff who might at a subsequent stage of the suit, not be amenable to him.

6. However, if the petitioner has any cause of action independent to his brother plaintiff respondent No. 6 in respect of the same subject-matter of the suit, if he so desires, may prefer to file a separate suit and such filling of sweet cannot be treated as a multiplicity of the proceedings.

7. Therefore, in the present case the circumstances are identical and in such a situation only the Courts have refused to grant the prayer of the petitioner. Such orders of the Courts below do not require any judicial review under Article 226 of the Constitution of India.

8. The petition, having no force is hereby dismissed.