**(1984) 09 CAL CK 0021**

**Calcutta High Court**

**Case No:** C.R. No. 3415 of 1982

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| Hindusthan Petroleum. Corpn. Ltd. | | APPELLANT |
| | Vs | |
| Hukum Chand Rajkumar | | RESPONDENT |

**Date of Decision:** Sept. 5, 1984

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 1 Rule 10(2), Order 5 Rule 20
- West Bengal Premises Tenancy Act, 1956 - Section 17(1)

**Citation:** 89 CWN 354

**Hon'ble Judges:** B.C. Chakrabarti, J

**Bench:** Single Bench

**Advocate:** Saktinath Mukherjee and Pradipta Roy, for the Appellant;Kazi Mohd Ali and Sk. Elahi Bakshi, for the Respondent

**Judgement**

B.C. Chakrabarti, J.

This revisional application at the instance of the plaintiff landlords is directed against order nos. 10 and 11 dated September 23, 1982 passed in Title Suit No. 113 of 1982 of the first court of Munsif at Arambagh. The plaintiff-petitioners instituted the suit against the opposite party no. 1 for his eviction from the suit premises and for arrears of rents and mesne profits. The case of the plaintiff-petitioners was that, the opposite party no. 1 took the suit premises in tenancy at a monthly rental of Rs. 200/- and that he thereupon set up a school there by the name of Ananda Marga Primary School. It is also alleged that the defendant was a habitual defaulter and that the petitioners required the premises for their own use and occupation.

2. Summons could not be served upon the opposite party no. 1 in the ordinary manner. It was served under Order V Rule 20 of the CPC the opposite party no. 1 not having been found at the address. On September 10, 1982 opposite party no. 2 filed

an application under Order 1 Rule 10 of the Code read with Sec 151 thereof for impleading him in the suit after expunging the name of opposite party no. 1. This application was rejected arid a second application was filed practically on identical grounds for addition of opposite party no. 2 as.a party to the suit. The case made out in the application was that there is a primary; school in the suit premises run by Ananda Marg Pracharak Sangha, that the General Secretary of the headquarter of the Sangha at Calcutta looks after the administration is run by the Principal appointed by the General Secretary. It was also the case that the opposite party no. 1, who was previously the Principal has renounced the word and has left the place without leaving any address and that the. Administrator appointed by the Sangha has been. facing difficulties in looking after and conducting the suit. " It was further stated that the Sangha had authorised opposite party no. 2 by executing a special power of attorney, to look after and conduct the defence of the suit. It was therefore prayed that the opposite party no. 2 should be added for otherwise the school which is admittedly being run in the suit premises from the very inception of the tenancy would suffer substantial injury. The opposite party no. 2 also filed an application under Sec. 17(1) of the West Bengal Premises Tenancy Act praying for permission to deposit the rents for the months of July and August, 1982. This application was allowed. Opposite party no. 2 has been added as a party defendant and the prayer to deposit the admitted rent has also been allowed at the risk of the opposite party no. 2.

3. Being aggrieved with these orders plaintiff-petitioners filed the present re visional application and obtained the Rule.

4. Mr. Mukherjee appearing on behalf of the petitioners has urged two points in support of his contention. Firstly it is contended that the carriage of the proceedings being with the plaintiffs a stranger to the suit could not be added against the wishes of the plaintiffs. It is further contended that in the suit for eviction the only necessary parties are the landlord and the tenant and that a stranger therefore cannot claim to be added either as a necessary party or as a proper party. In the second place it is contended that the mere fact that the Ananda Marga Pracharak Sangha is finding it difficult in conducting the defence, cannot be a sufficient ground for adding opposite party no. 2 on the basis of a power of attorney executed by one with whom there was no privity of contract.

5. Mr. Kazi Mohd. Ali appearing on behalf of the added defendant opposite party no. 2 herein, on the other hand has contended that even though the tenancy was taken in the name of Acharaya Probodhananda Abadhut, the tenancy in fact was in favour of the school run by the Sangha. The Sangha having empowered opposite party no. 2 to conduct the defence on its behalf and on behalf of the school, Mr. Ali contended that in the interest of justice and in order to avoid multiplicity of proceedings the controversy as to who is the real tenant should be finally adjudicated in the suit and that for the purpose of such adjudication the presence of the opposite party no. 2 is

necessary. In the affidavit-in-opposition it is further stated that the opposite party no. 2 has since been appointed the Principal of the school.

6. In support of the first contention raised by Mr. Mukherjee reliance was placed on the decisions in the cases of Vaithilinga Pandara Sannidhi Audhinakarthar Tiruvaduthurai Adhinam Vs. Sadasiva Iyer and Others, , Motiram Roshanlal Coal Co. (P) Ltd. Vs. District Committee and Others, and Banarsi Dass Durga Prashad Vs. Panna Lal Ram Richhpal Oswal and Others, . The principle enunciated in these decisions is that ordinarily a party cannot be ordered to be joined when it is opposed by the person bringing the action. In the matter of joinder of third party, it has been held in these decisions that the plaintiff being dominus litus is free to choose against whom he will fight and against whom he will not. Mr. Mukherjee also relied on an English decision in the case of Atid Navigation Co. Vs. Fairplay Towage, 1955(1) AER 698. It was held in that case that an order to add the proposed new defendants should not be made against the wish of the plaintiff company because the reason that they were to join as plaintiffs on the counter claim was not a sufficient reason by itself and in fact the issues between the existing parties to the action could be determined in the absence of the proposed new defendants. It follows therefore that the addition of party was refused not merely because the plaintiff resisted it but also on the facts of that case, viz., that the presence of the added defendant was not necessary for the determination of the claim.

7. The question whether a party should be added or not cannot be left entirely to the choice of the plaintiff. If this was the intention of the legislature, the language of Order I Rule 10(2) C. P. C. would have been different. The rule empowers the court by providing that "the court may at any stage of the proceedings" order any person to be added whether as plaintiff or as defendant, or whose presence before the court may be necessary in order to enable the court "effectually and completely to adjudicate and settle all the questions involved in the suit." It is. clear therefore on the language of the section that the discretion of the court in making an order striking out a party or adding one cannot be left to the choice of the plaintiff alone. The discretion has to be exercised if the other conditions of the rule so require the'' court to do so unfettered by the wishes of the plaintiff.

8. In the case of Amon Vs. Raphael, 1956(1) A.E.R. 273 it was held that the test whether the court has jurisdiction to add as defendant a person whom the plaintiff did not wish to sue was whether the order for which the plaintiff was asking in the action might directly affect the intervener by curtailing the enjoyment of his legal rights. In this decision the earlier case of AM Navigation Co. V. Fair-play Towage supra was also considered and it was observed that the beginning and end of the matter is that the court has jurisdiction to join a person whose presence is necessary for the prescribed purpose. Therefore the more fact that the plaintiff does not wish the opposite party no. 2 to be added cannot be the sole criterion in determining whether or not he should be.so added.

9. Mr. Mukherji also relied on a case of Jagat Enterprises Vs. Anup Kumar Daw & Ors. 1977(1) C.L.J. 186. This was a suit for ejectment in which a subtenant filed an application for being added as a party defendant in the suit and for allowing him to contest the same. It was held that the sub-lessee who has not been impleaded has no right to apply for being added for the purpose of asserting his independent right or statutory protection if he has any. In the instant case the added defendant is not seeking to assert any independent right of his own but his case is that Acharya Probodhananda Abadhut in his personal capacity was not the tenant. Therefore, in trying to be added on the strength of a power of attorney executed by the Sangha the opposite party no. 2 was not trying to assert an independent title analogous to that of a sub-lessee.

10. The facts of this case are somewhat peculiar. It is not just a case where in a suit for eviction between the landlord and tenant a third party, is seeking to intervene on assertion of an independent title. That there is something in the case of the opposite party no. 2 in the nature of an interest to defend the suit would be apparent from certain facts appearing on the record itself. Firstly, it appears that the suit was instituted against Acharya Probodhananda Abadhut C|O ''Principal, Anandamarg Primary School. In paragraph 2 of the plaint it is stated that the defendant took the premises from the plaintiffs and started a school there by the name of Anandamarg School. The summons could not be served on Acharya Probodhananda Abadhut personally in the ordinary manner. Summons was served by affixation under Order 5 Rule 20 of the Code. Mr. Ali appearing on behalf of the opposite party also drew my attention to two rent receipts filed by the opposite party no. 2 in the court below. In the rent receipts the tenant is described as Principal, Anandamarg School. The receipts were not in favour of Acharya Probodhananda Abadhut in his personal capacity. It is stated in the application under Order 1 Rule 10(2) of the Code that Acharya Probodhananda Abadhut who was initially the Principal at the inception of the School has enounced the world and has left without leaving any address. That there may be some truth in this claim is apparent from the fact that the summons could not be served on Acharya Probodhananda Abadhut personally, he not having been found. It further appears that the opposite party no. 2 has since been appointed the Principal of this School. The fact that the School is being run there from the inception is not very much in dispute. From ail these it appears that the opposite party no. 2 claimed to be added as a party not merely in assertion of an independent title but" also making out a case that Acharya Probodhananda Abadhut in his personal capacity was never the tenant but that the Sangha took the tenancy in the name of the School of which Acharya Probodhananda Abadhut happened to be the Principal at the said point of time. The rent receipts produced by the opposite party no. 2 lend somewhat prima facie support to the case so made out. Order 1 Rule 10(2) gives the court a discretion to add a new defendant when it is necessary to adjudicate effectively and completely all the questions involved in the suit. The rule does not say that only such persons may be added whose presence is necessary

for adjudication of the question between the parties to the suit. The question as to who is the real tenant is such a question falling within the meaning of Order 1 Rule 10(2) of the Code. The mere fact that the plaintiff has chosen to sue one cannot be the sole ground for refusing to add another on the theory that the question whether the party proposed to be added is necessary or not, is not required to be adjudicated in order to settle the dispute between the parties to the suit. To take such a view would amount to taking a restricted view of the rule. The rule nowhere says that the controversy or dispute referred to therein should be confined to the parties to the suit alone. What should be the real meaning of the rule came to be considered in the case of Vydiananda vs. Sitaram 1882 (5) Mad 52 referred to in the case Ramaswami Chettiar minor by next friend S.R.M.S.A. Annamalai Chettiar and Roya Kanniappa Mudaliar and Others Vs. P.M.A. Vellayappa Chettiar and Others, . The question posed there was answered in the following words :

Is it meant by these words that a person not originally impleaded is to be made a party only if the questions raised in the suit cannot otherwise be completely and effectually determined between the parties to the suit? Or is it meant completely and effectually determined so that they shall not be again raised in that or in any other suit between the parties to the suit or any of them and third parties? To accept the more restricted interpretation involves the addition of words which we do not find in the section, namely, between the parties to the suit" and there can be a few, if any questions, which cannot be determined between the parties to the suit one way or the other, and of which the determination, if they be material, will as between the parties to the suit not be final. On the other hand, the interpretation warranted by the terms would enable the Court to avoid conflicting decisions on the same question which would work injustice to a party to the suit, and finally and effectually to put an end to litigation respecting them. Consequently it follows that even though the plaintiff has not chosen to sue the opposite party no. 2, it is necessary to add him as a party so as to completely and effectually determine the controversy and so that the controversy may not again be raised in any other suit between the parties or any of them and third parties. Considered in that light I am not inclined to interfere with the order passed by the learned Munsif. The order allowing the application under Order 1 Rule 10(2) of the Code is accordingly affirmed. The re visional application therefore, fails and the Rule is discharged.
Let the records be sent down at once

there will be no order as to costs. Rule discharged.