

SUBJECT: PLEADING, DRAFTING AND CONVEYANCING.

Unit I CONTINUED.....

1.3 Description of parties /Parties to Suits in Civil Cases:

Introduction:

The civil cases, start with the institution of the case by one party against the another party and the competent court decides the rights and liabilities of the parties. Word 'party' in a suit means litigant. In other words 'party' in this sense refers to a person who has part to play in the proceeding of the suit. In *Jasminebibi V. Commissioner of Waqfs, AIR 1983 NOC 125 Cal*, the court held that in the absence of any contrary provision, the above meaning of the word can be accepted. *Order 1 of the Code of Civil Procedure, 1908* deals with the parties to the suit and also contains provisions for addition, deletion and substitution of parties, joinder, non-joinder and misjoinder of parties and objections to misjoinder and non-joinder.

Relevant provision:

Who may be joined as plaintiffs, Power of court to order separate trials, Who may be joined as defendants, Power to order separate trials where joinder of defendants may embarrass or delay trial and Conditions for entertainment of suits are defined under Rule 1, 2, 3 and 3A of Order I of Code of Civil Procedure 1908. Provisions under these Rules are:

ORDER I-PARTIES OF SUITS.....

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.

2. Power of Court to order separate trial— Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

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.

According to Order 1 of CPC, “All person may be joined in one suit as plaintiff in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions as alleged to exist whether jointly, severally or in the alternative where if such persons brought separate suits any common question of law of fact would be arise”.

Object:

- a. To avoid multiplicity of suits;
- b. To provide speedy trail;
- c. To secure the time;
- d. To avoid from expenditure of more money Suit, parties to suit.

Order 1 deal with the subject of parties to suit and among other things with the joinder misjoinder and non joinder of parties and to a certain extent with the joinder of the cause of action.

Definitions of parties:

A person can become a party to a suit only by his name appearing on the record oh the suit as a party such as plaintiff and defendant.

Who can be parties?

Only a natural and juristic person can be a party to the suit.

Test for Determining The Necessary Parties To A Civil Suit:

In *Benares Bank Ltd. v. Bhagwandas, 1947*, the full bench of the High Court of Allahabad laid down two tests for determining the questions whether a particular party is necessary party to the proceedings:

- a. There has to be a right of relief against such a party in respect of the matters involved in the suit.
- b. The court must not be in a position to pass an effective decree in the absence of such a party.

The above tests were described as true tests by Supreme Court *in Deputy Commr., Hardoi v. Rama Krishna, 1953.*

Generally, a party from whom no relief is sought is not a necessary party. In *Pravin v. State of Maharashtra, 2001*, the government bought a plot of land under a statute, and afterwards, sold it to the appellant. The sale was declared invalid by the Supreme Court. The original owner sought relief. It was held that the party which had purchased the plot of land from the government was not a necessary party, because no relief was claimed from it. In *Gujarat SRTC v. Saroj, 2001*, the legal representatives of the deceased driver of a car which collided with a SRTC bus, claimed compensation from the SRTC. In the present suit, it was held that the owner of the car and its insurer were not necessary parties since no relief had been claimed from them. Thus, the nature of relief claimed is important in deciding who is a necessary party.

In *General Manager, South Central Railway, Secunderabad v. AVR Siddhantti, 1974*, there was a non-joinder of parties. The plaintiff claimed relief against the Railways by impleading it through its representatives. The appellants contended that the employees who were likely to be affected by the decision had not been impleaded. Further, it was contended that since they were necessary parties, their non-joinder was fatal to the petition. However, the Supreme Court turned down this preliminary objection, holding that the relief was being claimed against the Railways only and it had been impleaded through its representative. Employees who were likely to be affected by the decision were at best proper parties. Their non-joinder could not be said to be fatal to the petition. This supports the proposition that a necessary party is one against whom relief is claimed.

In *K Kamaraja Nadar v. Kunju Thevar, 1958*, the question of who are the necessary parties to an election petition was decided upon. An election petition can call into question any election, challenging the fairness of the election, and may be presented by any candidate or elector. A petitioner may further pray for a declaration that he or any other candidate has been duly elected. In such a situation, he must implead all contesting candidates other than the petitioner, and also anyone against whom he has alleged use of unfair practices. Such contesting candidates will have to be joined as respondents to such a petition. Any failure to do so will amount to nonjoinder of necessary parties. This defect cannot be cured by way of an amendment of the petition, since the Election Tribunal does not enjoy the authority to amend the petition after it has been presented.

In *Praveen Bhatia v. Dr. M Ghosh*, the plaintiff filed a suit against a doctor due to whose negligence his wife had died. The doctor was held to be a necessary party (since relief has

been claimed from him). But the insurance company with whom the insurance has been obtained is neither a necessary nor a proper party, since no relief has been claimed from it.

General rule for suit:

- i. Opposing parties;
- ii. A subject in dispute;
- iii. A cause of action;
- iv. A demand of relief

Misjoinder of parties and its effects:

The joinder of any person as a party to a suit contrary to the provisions of the code is called misjoinder. Misjoinder may be misjoinder of plaintiffs; misjoinder of defendants and misjoinder of cause of actions.

i. Misjoinder of Plaintiffs: Where two or more persons may have been joined as plaintiffs in one suit but the right to relief alleged to exist in each plaintiff does not arise out of the same act or transaction (or series of acts or transaction) and if separate suits were brought by each plaintiff no common question of fact or law would have been arisen, there is misjoinder of plaintiffs]The objection on the ground of misjoinder of the plaintiffs, should be taken at the earliest possible opportunity; if not, it is be deemed to have been waived.

ii. Misjoinder of defendants: Likewise, where two or more persons have been joined as defendants in one suit but the right to relief alleged to exist against each defendant does not arise out of the same act or transaction (or series of acts or transactions) and if separate suits were brought against each defendant, no common question of fact or law would have arisen, there is misjoinder of defendants. In *Mosley v. General Motors Corp. Ltd*, the plaintiff (Nathaniel Mosley) along with 9 other persons joined in bringing an action individually and as class representatives alleging their rights under a statute were denied by General Motors, Local 25, United Automobile, Aerospace and Agriculture Implement Workers of America (Union), simply by reason of their colour and race. The plaintiffs intended to bring about a joinder of defendants. On this point, the district court held that there could not be a joinder of defendants since there is no right of relief out of the same transaction, and issues of fact/law involved are common to all the plaintiffs. In *Watergate Landmark Condominium Unit Owners Association v. Wiss, Janey, Elestner Associates*, the limits of the

plaintiffs to join additional parties were laid down and it was held that there must be a balance of convenience between the right to speedy trial of the plaintiff and the right to fair trial of the defendant.

iii. Misjoinder of cause of action: Misjoinder of causes of action may be coupled with the misjoinder of plaintiffs or misjoinder of defendants. Thus, the subject may be considered under the following three heads:

a. **Misjoinder of plaintiffs and cause of action:** Where in a suit there are two or more plaintiffs and two or more causes of action, the plaintiffs should be jointly interested in all the causes of action. If the plaintiffs are not jointly interest in all the cause of action, the case is one of misjoinder of plaintiffs and cause of action. The objection on the ground of misjoinder of plaintiffs and causes of action should be taken at the earliest opportunity'

b. **Misjoinder of defendant and causes of action:** Misjoinder of defendant and causes of action in a suit is technically called Multifariousness. Where in a suit, there are two or more defendants and two or more cause of action, the suit will be bad for misjoinder of defendants and causes of action, if different causes of action are joined against different defendants separately. Such a misjoinder is technically called multifariousness. The objection on the ground of multifariousness should be taken at the earliest opportunity. The Calcutta High Court *in Premrata Nahata And Anr. vs Chandi Prasad Sikaria, 2004* held that the defendant's application under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908 (in short "the CPC"). His case is that the plaint is liable to be rejected, because it is apparent from the statements in it that the plaintiff's suit is barred by law; the law that bars the suit is multifariousness.

Illustration: In a case, where the plaintiff purchased the suit house in which two persons were residing as tenants separately and he brought a suit for eviction against both the defendant-tenants claiming different relief against them. It was held that the suit was bad for multifariousness.

Effect of misjoinder:

Misjoinder of claims founded on several causes of actions. Order 2 of the code of Civil Procedure Code deals with the misjoinder of claims founded on several claims. According to

the rule, every suit must include the whole claim which the plaintiff is entitled to make in respect of that cause of action.

The question whether or not there is misjoinder of parties has to be decided on the basis of the averments made in the plaint and not reference either to the written statement or on the evidence led by the parties

Rule expressly and unequivocally declares that no suit is liable to be dismissed by reason of misjoinder of parties. In other words, misjoinder of parties is not fatal to the suit. It is mere irregularity covered by sections 99 and of the Code. Hence the various high courts, on the question of misjoinder of parties held that no decree shall be reversed or substantially varied, nor shall a case be remanded in appeal inter alia on account of misjoinder of parties, not affecting the merits of the case or the jurisdiction of the court. Where there is a misjoinder of parties, the name of the plaintiff or the defendant who has been improperly joined may be struck out under r 10 and the case may be proceed with.

Illustration:

An application for the correction of Misdescription of the defendant (in the plaint) was allowed, the correction could not be incorporated in the plaint. But, the Misdescription did not mislead any party. In fact, the written statement and the documents in appeal carried the correct name. It was held that decree was valid.

Non joinder of parties and its effects:

When a person who is a necessary party to a suit has not be joined as a party to the suit, it is a case of non-joinder. As regards the non-joinder of parties, a distinction has been drawn between the non-joinder who ought to have been joined as a party and the non-joinder of a person whose joinder is only a matter of convenience or expediency.

Court may allow necessary parties to be joined:

A suit is not to be dismissed only on the ground of non-joinder of parties. The court may allow necessary parties to be joined, in at a later stage. The court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it

According to the proviso of the Rule 9 of Order 1:

Nothing in the said rule applies to non-joinder of a necessary party. A necessary party is that in whose absence the court cannot pass an effective decree. If the decree cannot be effective without the absent party, the suit is liable to be dismissed. However, where the joinder of a person is only a matter of convenience and he has not be joined as a party, he may be added at any stage or the suit may be tried without impleading him. The allowing of the suit

depends on whether a party who has not been joined is a necessary party or merely a proper party. If a necessary party is not joined, then, the suit is liable to be dismissed.

Effects of non joinder:

Section 99 of the Code of Civil Procedure provides that no decree shall be reversed or substantially valid, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court and, however, nothing in this section shall apply to non-joinder of a necessary party. Where a relief is sought against a party without impleading him as a party, the suit would be liable to be dismissed.

Objections as to misjoinder and non joinder of parties:

All objections on the ground of non-joinder or misjoinder of parties must be taken at the earliest opportunity, otherwise they will be deemed to have been waived. But, if the objections as to non-joinder of necessary party have been taken by the defendant at the earliest stage and the plaintiff declines to add the necessary party, he cannot subsequently be allowed in appeal to rectify the error by applying the amendment

Rule 13 of Order 1 of the Code of Civil Procedure:

All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

When objection of non joinder raised:

An issue of non-joinder of a necessary party can be raised in appellate court. An objection as to non-impleadment of a necessary party, which was not taken in the first appeal cannot be allowed to be taken at the stage of second appeal.

Objection of misjoinder:

Objection as to misjoinder, when not raised in court of first instance is no ground for reversing a decree when they do not affect the merits of the case. The plea cannot be raised for the first time in the second appeal. When objection to want of parties is not raised by the defendant, it must be deemed to have been waived. But, court can add one as a party if it thinks it necessary. Where a necessary party is not impleaded, the objection even if not taken in the trial court, cannot be said to be waived. It can be raised even in revision.

Offers the Settlement of issues:

The word 'unless the ground objection has subsequently arisen' allows objecting even after the settlement of issues. In a partition suit, all coparceners must be joined as parties, even though some of them may be born after the institution of the suit. In the same way, a woman who is a party to a suit is married after the settlement of issues and the nature of the suit is such that the husband is a necessary party, the plaintiff should make the husband a party and the defendant may raise this objection even though it is after the settlement of issues.

Conclusion: As explained above, non-joinder or mis-joinder of parties is not fatal to the suit. Order 1, Rule 9 of the Code of Civil Procedure lays down that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matters of controversy so far as they regard the rights and interests of the parties actually before it. The only exception provided to this rule is furnished by the general rule that a court will refrain from passing a decree which would be ineffective and infructuous. To sum up, in the case of non-joinder of necessary parties the Court cannot pass an effective decree in their absence. In such a case, the suit cannot proceed and is liable to be dismissed if the plaintiff, on being provided with an opportunity to amend the plaint, refuses to do so. The two principles have been incorporated under the Code of Civil Procedure rightly in order to provide justice and protect the rights of the individuals.