

HIGH COURT OF GUJARAT**THAKOR GOVAJI AMARSANG***Versus***GENERAL MANAGER AND ANOTHER****Date of Decision:** 30 March 2012**Citation:** 2012 LawSuit(Guj) 843**Hon'ble Judges:** [N V Anjaria](#)**Case Type:** Special Civil Application**Case No:** 24123 of 2007**Subject:** Civil, Constitution**Acts Referred:**[Constitution Of India Art 227](#)[Code Of Civil Procedure, 1908 Or 1R 10\(2\), Or 1R 10](#)**Advocates:** [Ajay R Mehta](#), [Amit C Nanavati](#), [R C Jani](#)**Cases Referred in (+):** 4**N. V. Anjaria, J.**

[1] Respondent No. 2 herein, seeking to be joined as party in Civil Misc. Application No. 58 of 2005, which arose from judgment and decree in Special Civil Suit No. 368 of 2000, filed application Exh. 16 under Order 1 Rule 10 of Code of Civil Procedure, 1908 ('the Code' for sake of brevity). The learned Presiding Officer, Fast Track Court No. 4, Mehsana allowed it by his order dated 30.04.2007. That order is challenged in the present petition under Article 227 of the Constitution, by the petitioner who is the plaintiff in Special Civil Suit No. 368 of 2000. A related prayer is also made to set aside the order dated 16.07.2007 passed by learned Principal Sr. Civil Judge, Mehsana under Purshish Exh. 72, rejecting the request of the petitioner for withdrawal of Rs. 7,80,456/- deposited by defendant ONGC, pursuant to decree passed in the said Special Civil Suit.

[2] The facts involved are that one Thakore Govaji Amarsang, the petitioner herein, had instituted Special Civil Suit No. 368 of 2000 against the ONGC for recovery of Rs. 2,04,150/- by way of compensation and for mesne profits. The land bearing Survey

No. 815 at village Mita, Taluka Mehsana admeasuring 0 Hectors, 68 Are, 05 Sq. Mtrs. being the suit land was acquired in April, 1990 for limited period by ONGC by way of private negotiation for the public purpose of extracting crude oil from that land. According to the plaintiff he was the owner and occupier of the land entitled to compensation for loss of standing crop.

2.1 It was the case of the plaintiff that the possession of the land was not returned as agreed and the defendant Corporation was in illegal possession since 17.04.1991 and that he was entitled to compensation and mesne profits. In that suit, a decree was passed for Rs. 2,04,150/- with interest at 9% and Rs. 1,500/- per Are per year from the date of filing of the suit payable towards compensation. Defendant ONGC preferred appeal against that judgment and decree together with application for condonation of delay in preferring the appeal. It was in those proceedings that respondent No. 2 herein filed application Exh. 16 for impleading himself as party, which was allowed by the impugned order.

2.2 In his application Exh. 16, it was the say of Respondent No. 2 that land bearing No. 815 was of his ownership, and was not owned by Thakore Govaji Amarsang. It was stated that he had instituted before the court of learned Principal Senior Civil Judge, Patan, Special Civil Suit No. 10 of 2006 against the ONGC Thakore Govaji Amarsang, Thakore Punjaji Babuji arraigned as defendant Nos. 2 and 3 respectively, which was pending and defendant No. 2 and 3 had filed their reply also. That suit of respondent No. 2 herein was for permanent injunction and declaration, and for accounts. Therein it was pleaded that the defendant Nos. 2 and 3 acted in collusion with defendant No. 1, and by posing themselves to be the owners of the land, created false agreements and possession receipts, earned and received the rent in respect of the land from 17.04.1990 appropriating it to their own benefit without consent and knowledge of the plaintiff. It was contended by the plaintiff-respondent No. 2 herein that he had kept defendant Nos. 2 and 3 at the land to take care as servants and in that capacity they were in occupation of the land and he was being paid agricultural produce from the land who also used to help them financially.

2.3 Defendant No. 2 and 3 filed written statement in the proceedings of the aforementioned Special Civil Suit No. 10 of 2006 and averred inter-alia that the land in question was given by the plaintiff in mortgage created in favour of their father by executing mortgage deed dated 30.11.1964 and since then the land was in their possession. It was contended that the plaintiff having not redeemed the mortgage for which the limitation was 3 years and their possession being continuous, they had become owners of the land by virtue of adverse possession.

An unregistered mortgage document was produced, copy of which has been produced also on record of the present petition.

[3] In the above backdrop, respondent No. 2 filed his Exh. 16 application to be joined as party and contended that he, and not the petitioner, was entitled to the amount of compensation deposited by ONGC pursuant to decree in Special Civil Suit No. 368 of 2000 apprehending that it would be withdrawn by the petitioner to the detriment to his rights.

[4] This Court heard Mr. R. C. Jani, learned advocate appearing for the petitioner, Mr. Sidharth Dave, learned advocate for Mr. Ajay Mehta, learned advocate for respondent No. 1 and Mr. Nilesh A Pandya, learned advocate for Mr. Amit C. Nanavati appearing for respondent No. 2.

4.1 Learned advocate for the petitioner submitted that the land was mortgaged with the petitioner since 1964 by father of respondent No. 2. According to him the right to redeem for respondent No. 2 was extinguished as the mortgage was not redeemed within time. He submitted that the petitioner was in lawful possession, occupation and use of the land, when the ONGC acquired it and obtained possession, and in any view the petitioner, being an occupier, would alone be entitled to the compensation from ONGC. It was submitted that respondent No. 2 could not have been permitted to be joined as party as he had not interest or right of whatever kind in the suit land and the subject matter of dispute.

4.2 On behalf of respondent No. 2, learned advocate contended that he had direct interest in the proceedings, which was continuation of Special Civil Suit No. 368 of 2000. According to him, as he was not made party in that suit, upon learning about the decree having been passed which would defeat his right as an owner, he had applied for impleadment by filing the application at Exhibit 16. He submitted that unless he was impleaded, he would have to unnecessarily initiate separate and fresh proceedings for claiming his rights. It was submitted that when he also had instituted Civil Suit No. 10 of 2005, and looking to the case pleaded by the present petitioner in his written statement, in that case, it was proper that his application Exh. 16 was allowed by the trial court.

[5] From the facts above stated, it is seen that the petitioner and respondent No. 2 have between them a dispute in respect of ownership of land bearing Survey No. 815. In Special Civil Suit No. 368 of 2000 instituted by the present petitioner, he asserted his ownership and claimed compensation from ONGC for acquisition of land. In that suit, respondent No. 2 herein, was not arraigned as a party. Respondent No. 2 on coming to know about the decree having been passed in that Special Civil Suit,

instituted Special Civil Suit No. 10 of 2005 against the petitioner, for declaration and permanent injunction in which the present petitioner, ONGC and one Thakor Punji Babuji are the defendants. The pleadings show that the petitioner-plaintiff in Special Civil Suit No. 368 of 2000, and the respondent No. 2-the plaintiff in Special Civil Suit No. 10 of 2005, have both put-forth their cross claims. The decree in the suit of the petitioner was passed on 29.07.2005 and pursuant to that the decretal compensation of Rs. 7,80,456/- was deposited, which was sought to be withdrawn by the petitioner by filing a Purshis on 22.06.2007.

[6] When respondent No. 2 sought himself to be impleaded as party in the proceedings of Civil. Misc. Application No. 58 of 2005, arising from judgment and decree in Special Civil Suit No. 368 of 2000, it cannot be said that he was neither a necessary nor a proper party. He had have direct interest in the outcome of the proceedings. He can be said to be legally interested in the subject matter, when his own suit claiming ownership of the same land was pending and when in that the petitioner was one of the defendants who had set up his rights on the basis of an unregistered mortgage deed of 1964, claiming to have become owner of the mortgaged land on the ground of expiry of period of limitation for redemption of the mortgage. Therefore, what is being asserted by respondent No. 2 and the petitioner is their ownership in respect of Survey No. 815 and a status of being an owner. It is a dispute of legal character in respect of land which is subject matter of two different proceedings. The dispute being with regard to the ownership of the same land, the two proceedings become interactive. It touches upon the right to ownership and the rights incidental to ownership with regard to same subject matter land. In the facts and circumstances of the case, respondent No. 2 who is not impleaded in the proceedings initiated by the petitioner, could legitimately and legally claim to be joined as party by applying under Order 1 Rule 10(2) of the Code.

[7] The question of addition of parties under Order 1 Rule 10 is held to be generally not one 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. In [Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay](#), 1992 2 SCC 524, it was observed that a party can be joined as defendant even though the plaintiff does not think that he has not 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 which provides that only a necessary or a proper party may be added. It was observed that the in the light of clear language of the Rule, it is not open to the appellant to contend 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.

[8] The trial court has discretion under Order 1 Rule 10(2) of the Code. The provision permits impleadment of a party at any stage of the proceedings. The expression 'at any stage of the proceedings' confers a wide discretion on the court in the matter of addition or striking of parties, and the powers can be exercised even at the appellate stage. In the proceedings of appeal arising out of the judgment and decree in Special Civil Suit No. 368 of 2000, it was permissible for respondent No. 2 to apply for being joined as party, and it was competent for the trial court to exercise powers under Order 1 Rule 10 of the Code.

8.1 Impleadment of respondent No. 2 as party as justified for the reason also that in the situation otherwise, it would have led to further litigation between the parties. It is held in [Savitri Devi vs. District Judge, Gorakhpur and others](#), 1999 2 SCC 577 and in [J. J. Lal Pvt. Ltd. Vs. M. R. Murli and another](#), 2002 AIR(SC) 1061 that avoidance of multiplicity of proceedings is a desirable consequence and one of the objects of Order 1 Rule 10(2) of the Code.

[9] In the facts and circumstances of the case, the trial court has rightly exercised its powers under Order 1 Rule 10 of the Code, which endow the court exercising such powers with discretion. In the facts of the case, the trial court is found to have exercised its discretion on valid and relevant considerations, judiciously and within the legal parameters. The decision of the Supreme Court in [Subodhkumar Gupta Vs. Kalpana Gupta](#), 2005 11 SCC 578 deserves a reference in which it is pertinently held that where the trial court had exercised its jurisdiction and assigned reasons for permitting impleadment, the High Court should not interfere with the discretion exercised by the trial court in exercise of limited jurisdiction conferred by Article 227 of the Constitution.

[10] No ground could be successfully made out on behalf of the petitioners to be interfered with the impugned order. The petition is, therefore, dismissed with no order as to cost. Interim relief, if any, stands vacated.