

Special Legal Issues Seminar

**Examples of Party(ies) to Different Types of IP Lawsuits that are Proper but
not Necessary**

Object and Purpose

- ❖ A court of civil jurisdiction will be administered by the provisions of the Civil Procedure Code, 1908 (*CPC*).
- ❖ Order 1 of the Code of Civil Procedure, which deals with parties to the suit. It deals with necessity of bringing parties to the suit for proper and effectual adjudication of the matter in dispute.
- ❖ **Order I Rule 10** of CPC enables the court to add any person as party at any stage of the proceedings, if the person whose presence before the court is necessary in order to enable the court effectively and completely adjudicate upon and settle all the questions involved in the suit.
- ❖ Avoidance of multiplicity of proceedings is also one of the objects of the said provision.
- ❖ The general rule in regard to prosecution of parties is that the plaintiff in a suit, be dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief.

Relevant Provisions of the Code of Civil Procedure, 1908

❖ Order I Rule 9- Misjoinder and Nonjoinder

“9. *Misjoinder and nonjoinder.*—

No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and 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:

*[Provided that nothing in this rule shall apply to **non-joinder of a necessary party.**]*” [Emphasis Supplied]

❖ Order I Rule 10- Rejection of Plaint

“10. *Suit in name of wrong plaintiff.* —

*(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.*

Relevant Provisions of the Code of Civil Procedure, 1908 (Contd.)

(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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.-Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the [Indian Limitation Act, 1877 (15 of 1877)], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.” [Emphasis Supplied]

Types of Parties to the Suit

- ❖ There are two types of persons who may be added as party to the suit:

NECESSARY PARTY

- ❖ (1) Person who is a necessary party i.e., in the absence of whom relief claimed in the suit cannot be granted. In other words, it means that for the grant of relief claimed in a suit, a person who ought to have joined must be added.

PROPER PARTY

- ❖ (2) the second class of persons consists of those who are proper parties i.e., whose presence may be necessary with a view to fully adjudicate upon the matters involved in the suit.

- ❖ In *Kasturi v. Uyyamperumal & Ors* [(2005) 6 SCC 733], the Hon'ble Apex Court observed 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.”

Proper Party

- ❖ Proper parties are those whose presence may be necessary with a view to fully adjudicate upon the matters involved in the suit.
- ❖ The said power can be exercised in either of the two grounds:
 - (a) Such person ought to have been joined, either as a plaintiff or as a defendant, but is not so joined; or;
 - (b) Without whose presence, the question involved in the suit cannot be decided finally and effectively.
- ❖ **Why is a person added as a proper party?**
- ❖ A person is added as a proper party so as to decide the suit finally and effectively and also to avoid future litigations. If a party is not impleaded as a proper party, chances are there that after the conclusion of the trial, the said person may approach the court afresh with the grievance that he was not impleaded as a party in the previous suit.
- ❖ So, in order to avoid frivolous and multiple litigations, the court usually provides a wide window for impleading all persons concerned with a suit as a proper party.

Proper Party (Contd.)

- ❖ The only reason which makes it imminent to make a person a party to a suit is so that he can be made bound by the result of the action in a given suit. Therefore, the question to be settled must be a question in the action which cannot be effectually and completely settled unless the person is a party.
- ❖ A Court does not have jurisdiction to join a person whose presence is not necessary for the effectual and complete adjudication of all the questions involved in the dispute and this question, i.e. whether his presence is necessary for the effectual and complete adjudication of all questions, is to be decided keeping in mind the scope of the suit.
- ❖ The phrase all the questions involved means only the controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiffs inter se, or between the defendants inter se, or between the plaintiffs and third parties or between the defendants and third parties. Further, in the case of a proper party, the court has a discretion to allow or reject the application and a party has no right to insist upon being impleaded merely because his being a proper party.

Relevant Case Laws

❖ *Razia Begum v. Anwar Begum* [AIR 1958 SC 886]

“(1) That the question of addition of parties under R.10 of O.1 of the Code of Civil Procedure, is 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; ...

(2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;

(3) Where the subject-matter of a litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy; ...”

Relevant Case Laws (Contd.)

❖ *Mahadeva Rice & Oil Mills v. Chennimalai Gounder* [AIR 1968 Mad. 287]

“1. If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded.

2. It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subjectmatter which could still have been decided in the pending suit itself;

3. The proposed party has a defined, subsisting, direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognisable in law;

4. Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and

5. It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the suit.”

Relevant Case Laws (Contd.)

❖ ***Paschim Gujarat Vij Company Limited v. Manibhadra Ispat Ltd.* [R/Special Civil Application No. 13889 of 2019 (High Court of Gujarat, September 25, 2019)]**

- The Court noted that under Order 1 Rule 10(2) of CPC, if a party has been improperly joined as a defendant, the Court has the jurisdiction to strike off its name. The plaintiff, as dominus litis, decides who has to be impleaded as a defendant. However, if a defendant has no connection with the merits of the case, then it would not be necessary to retain such party and the court would be justified in striking off their name. The Court can exercise this discretion suo motu or on an application of a party to suit or on an application of a person who is not a party to the suit.

“...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 dispute in the suit, though they need not be a person in favour of or against whom the decree is to be made.”

“Directors of a company cannot be held liable in cases other than those where they give some guarantee or indemnity. In addition to this, they can be held liable in cases of malfeasance and misfeasance, i.e. where they have been guilty of tort towards those to whom they owe a duty of care, i.e. discharge fiduciary obligations. Since that is not the case here, directors are not necessary or proper parties in the suit.”

Relevant IP Case Laws

❖ *Baldev Singh v. Indian Plastic Footwear and Clothing Pvt. Ltd. and Ors.* [2021 SCC OnLine Del 4751]

- The original suit was filed to prevent Respondent no. 1 from infringing the petitioner's registered trademark by using the mark, 'HOUSE OF MADAAAN.'
- It was argued from the other side that there was no commonality between the potential case against M/s. Madaan Footcare Company and the other respondents, since the former was not deriving any right from the Dissolution Deed. Allowing the impleadment of the company would completely alter the plaint and change the cause of action. Since there were no common facts or questions of law and the transaction was not the same, the company could not be impleaded as a party.
- The Court held that since the petitioner is the dominus litis, he is entitled to implead the parties considered necessary for enforcing his claim. However, the petitioner filed an application for impleadment without filing application for the amendment of pleadings. The Commercial Court had observed in this context that there were no pleadings qua the company. The existing pleas only concerned respondent no. 1, which is a distinct company, and the commonality of the directors will not suffice to overcome this status. Unless, the petitioner discloses the commonality of the transaction, the company cannot be a necessary or proper party without appropriate pleadings.

Relevant IP Case Laws (Contd.)

❖ *Mitsubishi Electric India Pvt Ltd v. Anup Mittal & Ors.* [CM(M)--1058/2014]

- The petitioner Mitsubishi Electric India Pvt. Ltd. was impleaded as defendant No.6 in a suit filed by the respondent No.1 Anup Mittal and A Square Automation Pvt. Ltd.
- In the suit Mitsubishi filed an application under Order 1 Rule 10 CPC seeking deletion from the array of defendants as it was neither a necessary nor proper party.

“...To decide whether a party is necessary or proper for the suit, the facts have to be applied on the touchstone of construction of the rule, in particular the meaning of the words “**whose presence before the Court may be necessary**” ...the Court is empowered to join a person whose presence is necessary for the prescribed purpose...”

“...it cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a **desirable consequence of the rule rather than its main objective.**” [Emphasis Supplied]

Relevant IP Case Laws (Contd.)

❖ *Ultra Merchandise and Retails Limited v. In Entertainment India Limited* [2014 (6) ABR 239]

- The non-joinder of a necessary party is an inherent and fatal defect in the suit and a decree cannot be passed in such cases. In the case of non-joinder of proper parties, the suit can proceed and a decree will be made, but it can alter the nature and extent of the decree since without a proper party, the decree might not be complete and final. However, the non-joinder of a proper party cannot defeat a suit or serve as a ground to reverse a decree. Moreover, any pleas about the non-joinder of a proper party should be raised at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement. Otherwise, the objection concerning the non-joinder will be deemed to have been waived.

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“A plea of non-joinder of a proper party can always be taken and an issue can always be struck on it, provided of course that it is supported by averments in the pleadings. In such a case, the resultant decree will follow, but without the proper party it may not, in the words of the Supreme Court, be “a complete and final decision”. That is the distinction between the pleas of non-joinder of a necessary party and of a proper party. It is also therefore incorrect to say that a plea of non-joinder of a proper party cannot or would not ever be raised. It could, and an issue will be struck on it, for it might well affect the nature and extent of the final decree.”

Relevant IP Case Laws (Contd.)

❖ *Atul Kumar Singh v. Nitish Kumar & Ors* [CS (COMM) 258/2018]

- Atul Kumar Singh, a former JNU student had alleged that the book published by Patna-based Asian Development Research Institute (ADRI), through its member secretary Shaibal Gupta, and endorsed by Nitish Kumar, was a plagiarized version of his research work.
- The chief minister said in his application he had no direct or indirect association with other defendants and the book – “Special Category Status: A Case for Bihar”. He also contended he had only endorsed the book and not authored it, however, all news reports stated otherwise.
- The joint registrar stated that there were sufficient grounds to sue Kumar:
“Therefore, Kumar is both necessary as well as proper party to suit, as in his absence no effective decree can be passed in the present suit. Further, presence of Gupta is necessary in order to enable the court to effectually and completely adjudicate upon and settle all disputes in the suit”
[Emphasis Supplied]

THANK YOU!

Questions?

Sannidhi Mahapatra, Associate

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