

Special Legal Issues Seminar

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

Introduction

- ❖ **Order I** of the Code of Civil Procedure, 1908 deals with the different types of '*Parties to Suits*' and contains various provisions for the addition, deletion and substitution of parties, joinder, misjoinder and nonjoinder of parties.
- ❖ **Order I Rule 10** of Code of Civil Procedure enables the court to add any person as a party at any stage of the proceedings, if the person is such, that their presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit.
- ❖ The general rule in regard to impleadment of parties is that the plaintiff in a suit may, choose the persons against whom he/she wishes to litigate and cannot be compelled to sue a person against whom he/she does not seek any remedy.
- ❖ This general rule is subject to the provisions of **Order I Rule 10(2)** of Code of Civil Procedure, which provides for impleadment of *proper* or *necessary parties*.
- ❖ The provisions under Order 1 Rule 10(2) provide discretionary powers to the Court.

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 Plaintiff

“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 through 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]

Necessary and Proper Parties

❖ Necessary Party –

- A necessary party is one whose presence is indispensable to the constitution of the suit, against whom the relief is sought and without whom no effective order can be passed.

❖ Proper Party –

- A proper party is one in whose absence an effective order can be passed, but whose presence is necessary for a complete and final decision on the question involved in the proceeding.
- In other words, in absence of a necessary party no decree can be passed, while in absence of a proper party a decree can be passed so far as it relates to the parties before the court. His/her presence, however, enables the court to adjudicate more "effectually and completely". The Court has the power to strike out any party who is improperly joined.

❖ The discretion under the sub-rule can be exercised by the Court:

- i. suo moto, or
- ii. on the application of the plaintiff or the defendant, or
- iii. on an application of a person who is not a party to the suit.

Relevant Case Laws

❖ *Kasturi v. Uyyamperumal & Ors.* [(2005) 6 SCC 733]

- The Hon'ble Supreme Court of India laid down the Two tests that need to be satisfied for determining the question, 'who is a necessary party?'
- *The 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 parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.*”
- “*The question is to be decided keeping in mind the scope of the suit.*” [Emphasis Supplied]

Relevant Case Laws (Contd.)

- ❖ *Antony Devaraj v. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula, Annai Church rep by the Trustee, [2004 (2) C.T.C.]*

“(iii). The person to be added as one of the parties must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to be given on some of the questions involved, but it should make him as necessary witness.

(iv). The third party cannot be considered to be a necessary party for deciding the main issue framed in the suit. Mere ground that inclusion of the proposed third party would not alter the structure of the suit may not entitle the party to ask the Court to implead the third party as a defendant.

*(v). The Court may upon an application or suo motu, in a **fit and proper case**, implead a new party as defendant, **even against the plaintiff’s consent under certain circumstances**. The discretion vested with the Court though wide is however circumscribed by the limitations which are built in the provisions contained in Order 1 Rule 10(2), C.P.C. Where a person is neither necessary nor proper party, the Court has **no jurisdiction** to add him as a party. If the question at issue between the parties can be worked out without anyone else being brought in, the **stranger should not be added as a party.**”*

Relevant Case Laws (Contd.)

- ❖ *Antony Devaraj v. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula, Annai Church rep by the Trustee, [2004 (2) C.T.C.]*

“(vi) Normally, the Court should not add a person as defendant when the plaintiff is already available to project his case. The reason is that the plaintiff is the 'dominus litis'. He is the best judge of his own interest and it should be left to him to choose his opponent from whom he wants relief. If he seeks relief against a particular person, it is not the look out of the Court to see whether the relief should be claimed against the other persons, nor is it a duty of the Court to investigate whether the necessary parties have been added or left out.

(vii) Persons whose interest would be affected by the litigation are entitled to come on record to protect their interest when those are jeopardized by the persons already on record” [Emphasis Supplied]

Relevant Case Laws (Contd.)

❖ *Mumbai International Airport v. Regency convention Centre* [AIR 2010 SC 3109]

“ 1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a **necessary party**, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order I. If the **claim** against such a person is **barred by limitation**, it may refuse to add him as a party and even **dismiss the suit for nonjoinder of a necessary party**.

3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, **the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit**.

4) If an application is made by a plaintiff for impleading someone as a **proper party**, subject to limitation, bonafides etc., the court will normally implead him, if he is found to be a proper party...**if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party...or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms.**” [Emphasis Supplied]

Applicability of Order 1 Rule 10 C.P.C. in IP cases

❖ *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 issue in the suit was, ‘Whether the defendants have violated the copyright in the original work of the plaintiff ?’
- 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]

Applicability of Order 1 Rule 10 C.P.C. in IP cases (Contd.)

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

- The Petitioner was impleaded as Respondent No.6 in a suit filed by the Respondent No.1 Anup Mittal
- The Petitioner 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.
- The Additional District Judge held that though the petitioner was not a necessary party but it was a proper party whose presence would enable the Court to completely, effectively and adequately adjudicate upon the matter in issue in the suit and thus the application of Mitsubishi under Order 1 Rule 10 CPC was dismissed.

11 “...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]

Key Takeaways

- ❖ A `necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a `necessary party' is not impleaded, the suit itself is liable to be **dismissed**.
- ❖ A `proper party' is a party who, is not a necessary party and need not be a person in favour of or against whom the decree is to be made. The correct test is to ascertain whether the order would affect him/her or whether his/her interest would be prejudiced by it.
- ❖ The question of addition of parties, is generally not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised judiciously.
- ❖ The objective of the provisions is to bring before the court at the same time, all the persons who are involved in the dispute relating to the subject-matter so that the disputes may all be determined at the same time without delay, inconvenience and expenses on separate actions and trials and inconclusive adjudications.
- ❖ The provision confers wide discretion on the court to meet with every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record.
- ❖ However, the court cannot allow adjudication of collateral matters such that the addition leads to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into and would in turn unnecessarily prolong or obstruct the proceedings in the suit.
- ❖ A person should not be added simply because he/she may be incidentally affected by the judgment.

THANK YOU!

Questions?

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