

Precedents on nonjoinder of necessary parties

AIR 1993 SUPREME COURT 1587

KULDIP SINGH AND S. MOHAN, JJ.

Civil Appeals No. 1019 of 1980, D./ 26-2-1993.

Laxmishankar Harishankar Bhatt, Appellant v. Yashram Vasta (dead) by L. Rs., Respondent.

Civil P.C. (5 of 1908), O.1, R.9 - Dismissal for non-joinder of necessary parties-Suit for recovery of possession Plaintiff purchaser claiming to have acquired entire ownership of suit property-Plea by defendant-tenant that suit is liable to be dismissed for non-joinder of co-owners-No averments, however, in written Statement as to who are other co-owners and what rights they claim-Suit cannot be dismissed for non-joinder on which vague plea. (Para 13)

AIR 1994 SUPREME COURT 2301

(From : AIR 1989 Punj & Har 234)

KULDIP SINGH AND K. JAYACHANDRA REDDY, JJ.

Civil Appeal No. 3427-28 of 1990 with C.A. Nos. 3429 of 1990 and 4357 of 1990, D/- 12-4-1994.

Swaran Singh and others, Appellants v. State of Punjab and others, Respondents. @page-SC2302 East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), S.42 - 'Parties interested' - Determination - Test - Petition by right-holders under S.42 disputing title of Panchayat to disputed land - Tenants of disputed land from Panchayat - Are parties interested - Ought to be heard before any order is passed in petition.

Order 1, Rule 9.—Non-joinder of necessary parties.—Suit for recovery of possession on the basis of ownership.—Vague plea of non- joinder of co-owner in the suit.— Dismissal of suit for non-joinder not called for. There is no clear averment as to who are the co-owners and what exactly is the nature of right claimed by them. A vague statement of this character, in our considered opinion, could hardly be sufficient to non-suit the appellant on the ground of non-joinder of parties. We are unable to comprehend as to how the trial Court had come to the conclusion that the executants of the sale deed dated 12-2-1968 could not pass a full title when itself points out that the shares of the other co-owners were not known. Therefore, the Courts should have insisted on some material on record as to the existence of other co-owners and their rights pertaining to suit properties. In juxtaposition to revenue record, there must be some worthwhile evidence for the Court to conclude that there are other co-owners. Genealogical tree filed along with the written statement cannot point to the existence of co-owners without specific evidence in this regard. **Lakshmishankar Harishankar Bhatt v. Yashram Vasta (dead) by LRs., AIR 1993 SC 1587: 1993(3) SCC 49: 1993(1) Scale 726: 1993(2) Andh. LT 9**

Order 1, Rules 9 and 10.—Non- joinder of necessary parties.—Effect of.—Suit seeking succession.—Failure to implead other legal heirs.—The suit is liable to be dismissed for want of impleadment of necessary parties. That, in fact, is the conclusion which the trial Court had reached and yet no action was taken by the appellant to bring the necessary parties on the record. It is true that under Order 1, Rule 9 of the Code of Civil Procedure no suit shall be defeated by reason of the mis-joinder or non-joinder of the parties, but there can be no doubt that if the parties who are not joined are not only proper but also necessary parties to it, the infirmity in the suit is bound to be fatal. Even in such cases, the Court can under Order 1, Rule 10, sub-rule 2 direct the necessary parties to be joined, but all this can and should be done at the stage of trial and that too without prejudice to the said parties plea of limitation. Once it is held that the appellant's two brothers are co-heirs with her in respect of the properties left intestate by their mother, the present suit filed by the appellant partakes of the character of a suit for partition and in such a suit clearly the appellant alone would not be entitled to claim any relief against the respondents. The estate can be represented only when all the three heirs are before the Court. **Kanakarathanammal v. V.S. Loganatha Mudaliar and another, AIR 1965 SC 271: 1964(1) SCWR 565: 1964(6) SCR_1**
