

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No .1310 of 2013

Plaintiff	Gavin Venantius& others, through Mr. AbdurRehman, Advocate
Defendants	Mrs. HumairaHussain& others through Mr. Bashir Ahmed Khan, Advocate for Defendant No.1.
Intervener	Mr. Khalid Jawed Khan, Advocate.

Date of hearing 27th January 2016

Date of announcement: 06th April 2016

ORDER

SALAHUDDIN PANHWAR, J.Through *instant* application, moved under Order I rule 10 CPC [CMA No. 16718 of 2015], Intervener seeks his joining in the suit as one of the defendants on following grounds:-

2. That plaintiff is seeking declaration, injunction, damages, in respect of parts of immovable property(plot No. JM 251, Catholic Colony No.1, Karachi), admeasuring 1162 Sq.yds; this property was owned by VicotriaVenatius by virtue of Sub lease, thereafter, the same was partitioned in her lifetime who (said lady) subsequently bequeathed different portions of the property along-with construction thereon to different persons, including defendant No.3, the eldest son of lady; whom a portion, *comprising of 539 sq. yrds*, was bequeathed and he also received such possession. The defendant No.3 intended to raise construction on 490 sq. yards,out of 539 sq. yards, hence, he got approved building plan and raised construction, accordingly, instant plot was numbered as JM. 2/251 in the record; subsequently, the defendant No.3 sold out the said property to the applicant and his mother

for valuable sales consideration, such mutation was also affected, since then, *per applicant*, the possession is with applicant; in the year 2013 the applicant decided to demolish the old bungalow constructed on said plot in order to reconstruct it, consequently he approached concerned authorities, got approval and started construction on the said plot but on 9-10-2015 applicant came to know that by order dated 01.10.2015 passed in captioned suit such property was attached on the plea that construction is in violation of interim order of status quo passed on 14.10.2013.

3. Plaintiff filed counter affidavit contending therein that although, property was bequeathed to the defendant No.3 but possession of 539 yards was not delivered, as well construction was not raised thereupon.

4. Learned counsel for the applicant has, *inter alia*, contended that applicant is proper and necessary party, title of subject matter property is not disputed, hence, he may be allowed to join as defendant.

5. Learned counsel for the plaintiff though half heartedly opposed the joining of intervener as defendant and argued that in case this Court allows amendment of plaint, in that eventuality, he will not raise objection. On specific query that whether under Order I rule 10 CPC of Civil Procedure, 1908 (CPC) plaint can be amended, he referred sub-rule 4 of I rule 10 CPC emphasizing that there is no legal bar for amending the plaint in suitable circumstances.

6. Heard and perused the record.

7. The discretion, within meaning of Order 1 rule 10 (2) CPC, is not subject to '*no objection*' or '*objection*' of a party but the requirement of law is satisfaction of Court that adding/striking out of '*one*' is necessary for

effective and complete adjudication of 'all the questions' involved in the suit. This has been the reason that such exercise can well be exercised by the Courts even without any application from either side (*plaintiff & defendant*) as is evident from phrase 'or without the application of either party' used in the Order I rule 10(2) CPC. For making things clear reference to proviso of Order 1 rule 10(2) CPC being relevant, is made hereunder:-

"(2) 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, 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 unless the as may be the plaint thinks fit, effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

8. Now, before discussing merits of instant application, it would be relevant to examine the maintainability of the plea of the plaintiff that amendment in plaint also be allowed while allowing the impleading of intervener as *defendant*. To attend it, it would be relevant to refer the Order I rule 10(4) CPC which reads as:

*(4) Where a defendant is added, **the plaint shall, Court otherwise directs, be amended** in such manner necessary, and amended copies of the summons and of shall be served on the new defendant and, if the Court on the original defendant.*

9. It must be kept in view that except the above Rule the Order I CPC, *nowhere*, speaks about amendment. Further, the above permitted amendment is also applicable where the '*defendant is added*' but in '*plaint*' only. The terms '*plaint*' and '*pleading*' have been dealt and defined *separately* by the Code (Order VI and VII). The definition of plaint does include name, description and place of residence of defendant as is evident from Order VII rule 1(c) which reads as:

c) the name, description and place of residence of the defendant, so far as they can be ascertained;

hence it becomes quite obvious that whenever a party (not already arrayed as defendant) is added, the term '*plaint*' shall not serve its purpose unless it (plaint) fulfills the requirement of Rule 1(c) of Order VII CPC. Further, I am conscious of the legal position that while exercising jurisdiction (Order I rule 10) the Court is required to examine whether that party is necessary *or* otherwise for proper adjudication of all questions in absence of such party because, *as already discussed*, an application for joining that party is not *necessary* from either side (plaintiff & defendant). To make things rather clear, it would be proper to refer relevant provision of Order VI Civil Procedure Code which *prima facie* deals and controls the '*pleadings*'. The Rule 7 of Order VI CPC is relevant to be referred to unfold things *further* which is:

'7. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.'

(Underlining is supplied for emphasis)

10. It is pertinent to mention that fulfillment of Order VII rule 1 (c) CPC, *in no way*, brings any change or effect upon other requirements of *plaint* (Order VII CPC) hence such *amendment* has been allowed by legislature while joining as *defendant/plaintiff*. However, since raising of new ground of claim or allegation of fact is subject to '*by way of amendment*' (Order VI rule 17) which requires examination of same regarding its being inconsistent or otherwise with '*previous pleadings*'. Such comparative examination cannot be done in absence of '*proposed amendment*'. An amendment under Order 1 rule 1(4) CPC does not vest a right in defendants to file *amended written statement* however amendment in *plaint*, if allowed under Order VI rule 17 CPC does create such right. Thus, now I can conclude that term '*amended*' used in

Order 1 rule 10(4) CPC shall *normally* be confined to satisfaction of requirement of Order VII rule 1 (c) of CPC *only*.

11. Now, I would revert to merits of the case. The intervener claims specific and certain *legal* rights with reference to bequeath which even is not denied *though* possession is disputed. Thus, any decision in the matter shall cause effect upon the intervener and his *pleaded* rights and interests which alone is sufficient for enabling one to have his rights and interests represented for adjudication. Besides perusal of record reflects that applicant is owner of the portion which was bequeathed in favour of defendant No.3, hence, he is necessary and proper party. Accordingly, I find substance in the application of the intervener which is allowed. This *however* shall not prejudice the rights of the plaintiff to seek amendment in pleadings, as per law, if he finds it so necessary. Let amended title be filed within a week's time impleading the applicant as defendant No.13.

JUDGE