**Paper Presentation on Topic:**

**IMPLEADMENT OF THIRD PARTIES**

*vis-a’-vis*

**DOCTRINE OF DOMINUS LITUS**

By

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**Introduction:-**

It is 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 1 Rule 10 of Code of Civil Procedure (herein after referred as C.P.C.,) 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.

It is well settled principle of law that basically, it is for the plaintiff in a suit to identify the parties against whom he has any grievance and to implead them as defendants in the suit filed for necessary relief. He cannot be compelled to face litigation with the persons against whom he has no grievance. Where, however, any third party is likely to suffer any grievance, on account of the outcome of the suit, he shall be entitled to get himself impleaded. The question as to whether an individual is a proper or necessary party to a suit, would depend upon the nature of relief claimed in the suit and the right or interest projected by the persons, who propose to get themselves impleaded. No hard and fast rule can be weighed, that would cover a possible situation in this regard.

Dominus litus is the person to whom a suit belongs. This also means master of a suit. The person has real interest in the decision of a case. It is this person who will be affected by the decision
in a case. This person derives benefits if the judgment is in his favour, or suffers the consequences of an adverse decision. Doctrine of “Dominus litus” is applied to one, who though not originally a party has made himself such, by intervention or otherwise, and has assumed the entire control and responsibility for one side and it is treated by the court as liable for costs and a person who is really and directly interested in the suit as a party. The principles governing the power of the court under Order 1, Rule 10 of C.P.C., are that as a rule the court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is the “dominus litus”. He cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief.

The theory of dominus litus should not be over stretched in the matter of impleading of parties, because it is the duty of the court to ensure that if for deciding the real matter in dispute, a person is necessary party, the court can order such person to be impleaded. Merely because the, plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. The provisions of Order 1 Rule 10(2) C.P.C., are very wide and the powers of the court are equally extensive. Even without an application to be impleaded as a party, the court may, at any stage of the proceedings order that the name of any party, who out 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.

**Necessary and proper parties to the suit**:-

There are two types of persons who may be added as party to the suit. (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, (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 vs., Uyyamperumal and others* reported in (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.”

Addition of parties should not be made merely to avoid multiplicity of suits if their presence is not necessary for determining the real question. The said power can be exercised on 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 his presence, the question involved in the suit cannot be decided finally and effectively. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness; it is not merely that he has an interest in the correct solution of some question involved and has thought of arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action. Therefore, the question to be settled must be a question in the action which cannot be effectually and completely settled unless he is a party. It is necessary that the person must be directly or legally interested in the action is the answer i.e., he can say that the litigation may lead to a result which will affect him legally, that is, by curtailing his legal right.

Basic Principles for Impleadment of third parties under the provisions of Order 1 Rule 10 C.P.C., in the light of various Judicial pronouncements:-

In Razia Begum Vs. Anwar Begum reported in AIR 1958 SC 886, the Hon’ble Apex court laid down the following broad principles:-

"(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; but in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in S. 115 of the Code;

(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;

(4) The cases contemplated in the last proposition, have to be determined in accordance with the statutory provisions of Ss.42 and 43 of the Specific Relief Act;

(5) In cases covered by those statutory provisions, the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;

(6) The result of a declaratory decree on the question of status, such as in controversy in the instant case, affects not only the parties actually before the Court, but generations to come, and in view of that consideration, the rule of 'present interest', as evolved by case law relating to disputes about property does not apply with full force; and

(7) The rule laid down in S. 43 of the Specific Relief Act, is not exactly a rule of res judicata.”

In Mahadeva Rice & Oil Mills Vs. Chennimalai Gounder reported in AIR 1968 Mad. 287, the Hon’ble Madras High Court, explained shortly but vividly the basic object of the provision Order 1 Rule 10 C.P.C., and laid down the following principles:-

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 subject-matter 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.

In Antony Devaraj v. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula, Annai Church rep by the Trustee, reported in 2004(2) C.T.C. 183 the Hon'ble Madras High Court considered the right of a third party to claim addition of party. It was held as follows:-

"(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 give 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.

(vi) A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit.

(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”

In Mumbai International Airport vs., Regency convention Centre reported in 2010 (5) ALD (SC) = AIR 2010 SC 3109 the Hon’ble Apex court gave some illustrations regarding exercise of discretion for adding of parties as follows:-

"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 non-joinder of a necessary party.

2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.

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, bonfides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, 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, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms."

**Applicability of Order 1 Rule 10 C.P.C., in different cases:**

(i) **Sec.92 C.P.C., proceedings:**

It is open to a court to add a party as defendant in a suit under Sec.92 C.P.C., just as in any other suit. Its right to sue is regulated by Order 1, Rule 10 C.P.C.,

(ii) **Partition Suit:**

In a suit for partition the principle of dominus litus is not strictly applicable since the plaintiff and also the defendants will be sharers.

(iii) **Specific performance suit:**

The plaintiff who has filed the suit for specific performance of the contract for sale is dominus litus and cannot be forced to add
parties against whom he does not want to fight unless it is a compulsion of the rule of law.

(iv) **Execution petition:**

In Changanti Lakhmi Rajyam and others Vs., Kolla Rama Rao reported in 1998(1) ALD 497 the Division Bench of Hon’ble A.P., High Court held that Order 1 Rule 10 C.P.C., is applicable to suits and appeals and not applicable to the execution proceedings. The heirs of J.Dr., if any will have to agitate Under Order 21 Rule 58 or Rule 101 C.P.C.,

(v) **Cause of action:**

In Mohannakumaran Nair Vs. Vijayakumaran Nair reported in AIR 2008 SC 213 the Hon’ble Apex court observed that Application of doctrine of dominus litus is confined only to the cause of action which would fall within Sections 15 to 18 of the Code of Civil Procedure. It will have no application in a case where the provision of Section 20 thereof is sought to be invoked.

**Difference between Order 1 Rule 10(2) and Order 6 Rule 17 C.P.C.,**

Order 1 Rule 10(2) C.P.C., covers two types of cases (a) of a party who ought to have been joined but not joined and is a necessary party, and (b) of a party without whose presence the question involved in the case cannot be completely decided. On the other hand Order 6 Rule 17 of the Code deals with amendment with the leave of the court by a party of his own pleadings if such amendment is necessary for determination of the real question in controversy. Order 6 Rule 17 is therefore wider in its scope and ambit than Order 1 Rule 10, though the later also confers power on even the court to add or strike off a party to the action. The object of Order 1 Rule 10(2) C.P.C., is to bring before the court all persons at the same time 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 a separate actions and trials. Order 6 Rule 17 of the Code deals with amendment with the leave of the court by a party of his own pleadings, if such amendment is necessary for determination of the real question in controversy. Order 1 Rule 10(2) C.P.C., confers powers also on the court without a motion from any of the parties to exercise the power, whereas Order 6 Rule 17 enables a party to seek amendment.

**Computation of Limitation when a party is added:**
Section 21 of Limitation Act provides that wherever on institution of a suit a new plaintiff or defendant is substituted or added, the suit shall, as regard him, be deemed to have been instituted when he is so made a party. However, if court is satisfied that omission to include a new plaintiff or defendant was due to mistake made in good faith, it may direct that the suit as regards to such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

**Conclusion:-**

From the above discussion it can be concluded that the general rule is that the plaintiff is master of his suit. He is dominus litus. He cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief. It is discretionary to grant a relief under Order 1 Rule 10(2) C.P.C., In exercising the direction the court will invariably take into account the wishes of the plaintiff before adding a third person as a defendant to his suit. Keeping in view of the above discussed basic principles, where the court finds that addition of the new defendant is absolutely necessary to enable it to adjudicate effectively and completely the matter in controversy between the parties, will it add a person as a defendant even without the consent of the plaintiff.

Reference books:-

1. *Code of Civil Procedure* – By Sri K.S.Gopala Krishnan
2. *Compendium of Civil Laws* – By Sri V.J.Rao
3. *Civil Adjudication Law Practice & Procedure* – By V.S.R.Avadhani
4. *A Treatise on Interlocutory Applications* – By Sri V.S.R.Avadhani