

GAHC010243352024



2026:GAU-AS:12076

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

CRP(IO)/490/2024

- 1.** Kimi Sarda
W/O Sri Gopal Sarda,
Permanent Resident of Janiganj Bazar,
PO and PS Silchar,
District Cachar, Assam
Presently Residing At P 78, CIT Road,
Esteem 6m, 2nd Floor, Near Fulbagan, PS
PO Kolkata 7000054, West Bengal,
Represented by her duly constituted by
her duly constituted Attorney Sri Rajendra
Kumar Sarda,
Aged About 73 Years, Son of Late Ram
Charan Sarda, of Janiganj Bazar, PO And
PS Silchar, District-Cachar Assam

.....Appellant

-Versus-

- 1.** Krishna Sharma
S.O Late Ananda Sharma,
Resident Of Bhandar Galli, Tarapur, Silchar,
PO Silchar, Dist Cachar, Assam 788003
- 2.** Smti Geeta Das
W/O Late Sankar Das
Resident of Arjya Patty PO and PS Silchar
District Cachar Assam 788001
- 3.** Smti Uma Das
W/O Late Santanu Das

Resident of Arjya Patty PO and PS Silchar
District Cachar Assam 788001

4. Smti Supriya Das
W/O Late Atanu Das
Resident of Arjya Patty PO and PS Silchar
District Cachar Assam 788001
5. Nilanjana Das
D/O Late Atanu Das
Resident of Arjya Patty PO and PS Silchar
District Cachar Assam 788001

.....Respondents

For Appellant	:	Mr. S. Choudhury, Advocate
For Respondent(s)	:	Mr. G. N. Sahewalla, Sr. Advocate Ms. S. Todi, Advocate
Date of Hearing	:	21.08.2026
Date of Judgment	:	24.08.2026

BEFORE HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA JUDGMENT AND ORDER

1. Heard Mr. S. Choudhury, the learned counsel for the petitioner. Also heard Mr. G. N. Sahewala, the learned senior counsel assisted by Ms. S. Todi, the learned counsel for the respondent No. 1.
2. This application under Article 227 of the Constitution of India has been filed by the petitioner, namely, Smt. Kimi Sarda, impugning the order dated 10.09.2023 passed by the Court of learned Civil Judge (Junior Division) No. 4, Cachar, Silchar in Misc. Case No. 102/2023, whereby the prayer for impleading the respondent No. 1 as a defendant in the Title Suit No. 138/2021 was allowed.

3. The facts relevant for consideration of the instant CRP (I/O), in brief, are that the present petitioner had filed a title suit before the Court of learned Civil Judge (Junior Division) No. 4, Cachar, Silchar against present respondent Nos. 2 to 5 and one more defendant, namely, Smt. Supriya Das who was arrayed as defendant No. 2 in the said suit. However, she has not been made a party in this Revision Petition. The present petitioner has sought the relief of declaration of her right, title and interest over the suit property as well as for eviction of the said defendants from the suit property and for permanent injunction against the defendants. The said suit was registered as Title Suit No. 91/2013.
 4. During the pendency of the aforesaid suit, respondent No. 1, Shri Krishna Sharma, filed an application under Order I Rule 10 read with Section 151 of the Code of Civil Procedure, 1908, seeking his impleadment as a defendant in the suit. It was contended in the said application that the present respondent No. 1 has taken a room situated over the schedule property on monthly rental basis from the respondent No.2 who was the defendant No. 1 in the suit filed by the present petitioner. It was further contended that a tenancy agreement was also executed between them and the respondent No.1 is running a retail electric goods shop by the name and style M/s Anandamoyee in the said premises.
 5. Though, the present petitioner objected to the said prayer before the Trial Court by filing written objection, however, by order dated 10.09.2023, passed in the Misc. Case No. 102/2023, arising out of Title Suit No. 138/2021, the Trial Court allowed the aforesaid
-

application filed by the present respondent No. 1 and directed him to be impleaded as a defendant in the said suit. The present petitioner was also directed to accordingly amend the plaint. Being aggrieved by the aforesaid order, the instant Revision Petition has been filed.

6. Mr. S. Choudhury, the learned counsel for the petitioner has submitted that the Trial Court had erred in allowing the impleadment application filed by the present respondent without taking into consideration that the present respondent No. 1 is not a necessary party in the suit. He further submits that the trial court also failed to take into consideration that the plaintiff, being the *dominus litis* in a suit, has the option to choose as to who may be impleaded as defendant in the suit filed by him.
7. He further submits that since there is no tenant-landlord relationship between the present petitioner and the present respondent No. 1, he cannot be compelled to implead such a person when the suit is already pending before the court, wherein the other defendants are made parties. He further submits that if the petitioner is able to obtain decree in the suit against the persons from whom the present respondent has derived his right as a licensee, there may not be any requirement of seeking a separate decree against such an unauthorized licensee.
8. He further submits that in the event if a decree is issued in favor of the present petitioner by the Trial Court without impleading the respondent No. 1, and if he remains aggrieved by such a decree, he

always has recourse to approach before the Executing Court by filing an appropriate application under Order 21 Rule 99 of the Code of Civil Procedure, 1908.

9. As such, he submits that the trial court was wrong in directing the impleadment of the present respondent as a defendant in the suit filed by the present petitioner, ignoring the fact that the present petitioner, being the *dominus litis* in the suit, has the discretion to choose as to whom he may add as defendants. In support of his submission, the learned counsel for the petitioner has cited the following rulings:

- i. ***Vidur Impex and Traders Private Limited and Others Vs. Tosh Apartments Private Limited and Others***, reported in **(2012) 8 SCC 384**.
- ii. ***NAK Engineering Company Private Limited Vs. Tarun Keshrichand Shah***, reported in **2026 INSC 8**.

10. On the other hand, Mr. G. N. Sahewala, the learned senior counsel for the respondents submits that the Trial Court has rightly passed the order of impleading the respondent No. 1 as a defendant in the suit after considering the fact that it is the present respondent, who is in possession over the suit property since the year 2000 and has been running his business therein after taking electricity connections and depositing rent in the Court after the present respondent No. 2 refused to accept the said rent from him.
11. He submits that this application under Article 227 of the Constitution of India is not maintainable as the jurisdiction under

Article 227 of the Constitution of India has to be sparingly exercised and with circumspection.

- 12.** He submits that Order 1 Rule 10 of the Code of Civil Procedure, 1908 gives judicial discretion to the Court to add a party at any stage of the proceeding if the party sought to be added is either a necessary party or a proper party.
- 13.** The learned senior counsel for the respondents submits that in the instant case, since the present petitioner is admittedly in possession of the suit property, he is a necessary party to the suit and without impleading him, no effective decree may be passed in the Suit. He further submits that impleadment of the present respondent No. 1 is also required to avoid multiplicity of litigation as admittedly the present respondent No. 1 is in possession of the suit property. He submits that though, the principle that it is the plaintiff who, being *dominus litis*, may choose a person against whom he wishes to litigate is a well-accepted principle, however, the same is not an absolute rule under all circumstances and the provisions contained in Order 1 Rule 10(2) gives discretion to the Court, in an appropriate case, to implead a proper or necessary party.
- 14.** He submits that in the instant case, since there is a dispute regarding acceptance of rent between the present respondent No. 1 and respondent No. 2, the suit filed by the present petitioner is a collusive suit, wherein the petitioner has deliberately suppressed the fact that a shop room over the suit schedule property is presently in possession of the present respondent No. 1. In support of his

submission, he has cited the ruling of the Apex Court in the case of ***Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Others***, reported in **(2010) 7 SCC 417**.

15. I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.
16. The question to be decided in this Revision Petition is as to whether the discretion of the Court to implead a party under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 would override the right of the plaintiff, as a *dominus litis*, to choose as to who may be made defendant in the suit filed by him. In this regard, the Apex Court has observed in the case of ***Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and Others (supra)*** as follows:

"13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to sue and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ('the Code', for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

'10. (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."

14. *The said provision makes it clear that a court may, at any stage of the proceedings (including in an appeal) either upon or even without any application, and on such terms as may appear to it to be just, direct:*

(a) that any party improperly joined as a plaintiff or defendant, be struck out;

(b) that any person who ought to have been joined (that is, who is a necessary party) 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 (that is, who is a proper party), be added as a party."

15. *A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree can 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, 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 he need not be a person in favour of or against whom the decree is to be made. If a 'proper party' is not accorded an opportunity to participate in the proceedings, the decision may not bind him, nor should the decree be passed in his absence if it affects his rights, but the suit will not be dismissed for non-joinder."*

- 17.** From the observations made by the Apex Court in the above judgment, there remains no doubt that the general rule with regard to impleadment of parties, that the plaintiff being *dominus litis* may choose the person against whom he wishes to litigate, gives way to the discretion of the court under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 to implead either necessary or proper parties, as the case may be.
 - 18.** In the instant case, there is no dispute that Respondent No. 1 is in possession of a room in the suit premises over which he is running his shop. As such, there is no doubt that his presence in the suit as a defendant would enable the Trial Court to completely, effectively, and adequately adjudicate upon all matters in dispute in the suit. As such, not to speak of whether he is a necessary party or not, there is no dispute that Respondent No. 1 is certainly a proper party in the suit. As such, the exercise of discretion by the court under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 in impleading the present Respondent No. 1 in the above-mentioned suit does not appear to be an arbitrary exercise of the said discretion in any view of the matter.
 - 19.** It is a well-settled proposition of law that the supervisory power of this Court under Article 227 of the Constitution of India has to be exercised sparingly and with circumspection. Such an exercise of power may be justified if the Court below has exercised its discretion with arbitrariness, capriciously and without following the principles of natural justice.
-

- 20.** However, it is not the case in the present case, and it appears that the Trial Court has given valid reasons for exercise of its discretion under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 for impleading the present respondent as defendant in the above-mentioned suit. As such, this Court does not find it a case where extraordinary powers of this Court under Article 227 of the Constitution of India may be invoked to interfere with the impugned order.
- 21.** In view of the discussions made and reasons stated in the foregoing paragraph, this Court does not find any merit in this case to invoke its extraordinary powers under Article 227 of the Constitution of India to interfere with the impugned order.
- 22.** Accordingly, this CRP (I/O) is hereby dismissed.
- 23.** The interim order of stay of the suit granted in this CRP (I/O) is accordingly, vacated.
- 24.** Let a copy of this order be forwarded to the Trial Court.
- 25.** The parties are left to bear their own costs.

JUDGE

Comparing Assistant