Subject Name: Civil Procedure Code
Topic Name: Striking, Adding or Substituting Parties

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Rule 10 of Order I of Code of Civil Procedure, 1908 addresses the procedures for striking out, adding, and substituting parties in a legal proceeding.

Adding or Substituting Plaintiffs

Rule 10(1) of Order I pertains to the process of adding or substituting plaintiffs in a suit. If, subsequent to filing the suit, the plaintiff realises that obtaining the relief sought necessitates the inclusion of another person as a plaintiff, or if it becomes evident that someone else, rather than the original plaintiff, is entitled to the relief sought, an application for the addition or substitution of the plaintiff can be made.

The underlying purpose of this provision is to safeguard honest plaintiffs who genuinely believe in the validity of their claims from being dismissed on mere technical grounds. In essence, the objective is to adjudicate the genuine disputes between the parties rather than allowing technical objections to thwart just and honest claims. Thus, this provision must be interpreted liberally to promote the cause of justice.

To satisfy this sub-rule, three conditions must be met:

1. The suit must have been initiated in the name of the wrong person as the plaintiff.
2. The mistake must be made in good faith.
3. The substitution or addition of the plaintiff must be necessary for determining the true substance of the dispute.

Illustrations:

1. C, acting as the agent of A, erroneously initiates a suit against B in his own name. The court has the authority to substitute the name of the principal, A, for that of the original plaintiff, C.

2. A joint Hindu family firm mistakenly files a suit in the name of the firm, although the provisions of Order 30 pertaining to the filing of suits by firms do not apply to such a firm. In this scenario, the court may permit the substitution of the names of the members of the Hindu joint family firm as plaintiffs.

3. A, believing he has a title under a gift deed, brings a suit for possession of a house against B, under the mistaken belief that the house was gifted to him by the said deed. Upon discovering that the deed does not pertain to that house, the real owner could be substituted as the plaintiff in place of A.

4. A initiates a suit against B for possession of a house. B argues that since A has transferred the house to C, A lacks the title to sue, rendering the suit untenable. Despite A's insistence on his right, it is later discovered that A's claim was false. Consequently, A applies to add C as a co-plaintiff. However, since the mistake was not found to be made in good faith, the application for adding C as a co-plaintiff should be rejected.

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Striking Out or Adding Parties

The court has the authority to strike out or add parties to a suit based on two grounds:

1. If a person should have been joined as a plaintiff or a defendant but was not included.
2. If the question involved in the suit cannot be completely decided without the presence of that person.

Sub-rule (2) of Rule 10 empowers the court to add any person as a party to the suit if their presence is deemed necessary for a full and final resolution of the dispute.

The objective of this provision is to ensure that all individuals with an interest in the dispute are brought before the court simultaneously, allowing for the comprehensive and conclusive determination of the matter. This approach minimises the need for multiple actions and trials, as well as inconclusive adjudications, thereby saving time, inconvenience, and expenses.

Consequently, this provision grants the court broad discretion to address any defects in parties, unaffected by the plaintiff's failure to include necessary parties. However, the addition of parties remains a judicial discretion that must be exercised judiciously.

Judicial Authority and Imperatives of Order I

Rule 10(2) of Order I grants the court extensive powers regarding the joining of parties, which must be exercised based on sound judicial principles and considering all relevant facts and circumstances of the case.

Before exercising these powers, two key considerations must be borne in mind:

1. The plaintiff is the dominus litis, the master of the suit. It is primarily up to the plaintiff to select their opponent against whom they seek relief. Therefore, the court typically should not compel the plaintiff to litigate against a party they do not wish to engage with or from whom they do not seek relief.



2. If the court determines that the presence of a particular person is essential for the thorough and comprehensive adjudication of all disputes between the parties, regardless of the plaintiff's wishes, the court may exercise its power to join that person as a party to the suit.

The court can exercise this power at any stage of the proceedings, either upon the application of the parties or suo motu (on its own motion), and on terms and conditions deemed just by the court.

In the case of Anil Kumar v. Shivnatho, the Supreme Court emphasised the purpose of Order I, Rule 10(2), stating that its objective is to ensure that all relevant parties to the dispute are brought

before the court simultaneously to enable the efficient and conclusive resolution of the matter. This aims to avoid prolongation, inconvenience, and the multiplicity of proceedings.

However, if a special statute designates a person as a necessary party to the proceeding and mandates that non-joinder of such a party will lead to the dismissal of the petition, the court cannot utilise the corrective powers granted by Order I, Rule 10 to circumvent the consequences of non-joinder of that party.

Transposition of Parties

In transposition, a party already listed as either a plaintiff or a defendant requests to be moved from one capacity to another; for example, from plaintiff to defendant or vice versa.

Since the primary objective of Order 1 Rule 10 of the Code is to prevent the proliferation of legal proceedings, there is no reason why the principles of adding or striking out parties should not extend to transferring parties from one side to the other.

Therefore, a court has the authority to order the transposition of parties in an appropriate case. This can be initiated either by an application from a party or by the court suo motu. However, such transposition cannot be allowed if it fundamentally changes the nature of the suit or causes prejudice to the opposing party.