Subject Name: Civil Procedure Code
Topic Name: Joinder and Non-Joinder of Parties

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Introduction

Order 1 delves into the involved parties in a lawsuit, constituting the primary requisite. Additionally, it encompasses regulations pertaining to the inclusion, removal, or replacement of parties, consolidation, misalignment, and absence of parties, along with objections concerning misalignment and absence.

Moreover, it partially addresses the consolidation of legal grounds. Furthermore, a clause is stipulated for a "*representative suit*."

The issue of party consolidation can emerge concerning either the plaintiffs or the defendants. If an action is perpetrated by a lone individual and impacts another individual singularly, the matter of party consolidation doesn't come into play.

For instance, if A assaults B, the latter can individually sue A for the tort, as it directly affects him. The question of consolidating parties arises only when an action involves two or more individuals or impacts multiple individuals.

Therefore, if A assaults both B and C, or if A and B jointly assault C, the issue of consolidating plaintiffs or defendants arises.

Joinder of Plaintiffs

Rule I outlines the joinder of plaintiffs. It specifies that multiple individuals can be joined in a single suit as plaintiffs if two conditions are met:

(a) the alleged right to relief for each plaintiff stems from the same act or transaction, and
(b) the case possesses a nature where, if these individuals pursued separate lawsuits, common questions of law or fact would arise.

The inclusion of the word "and" between clauses (a) and (b) distinctly indicates that both conditions must be satisfied.

The main aim of Rule 1 is to prevent the proliferation of legal proceedings and unnecessary expenses.

Illustrations:

1. A, B, and C jointly enter into an agreement to sell 100 tins of oil. Subsequently, A refuses to fulfill the contract. Both B and C have individual rights to seek damages from A due to the breach of the agreement. These rights stem from the same transaction—the breach of contract. Moreover, common legal and factual questions would arise in separate lawsuits. Therefore, B and C can collectively file a lawsuit against A to claim damages.

2. An altercation occurs between A and both B and C. A simultaneously assaults B and C. In this scenario, B and C have the right to join as plaintiffs in a single lawsuit seeking damages from A for the assault. Both conditions required by Rule 1 are met.

3. A agrees to sell and deliver 100 tins of oil to B at a specified rate on January 1, 1991. Additionally, A agrees to sell and deliver the same quantity of oil to C at the same rate on the same day. In this case, B and C cannot join as plaintiffs in one lawsuit against A because the transactions are distinct.

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Joinder of Defendants

Rule 3 governs the joinder of defendants. It asserts that multiple individuals can be joined as defendants in a single suit if two conditions are met:

(i) the alleged right to relief against them arises from the same act or transaction, and

(ii) the case involves a nature where, if separate lawsuits were initiated against these individuals, common questions of law or fact would arise.

The inclusion of the word "and" emphasises that both conditions are cumulative, not alternative.

The fundamental purpose of Rule 3 is to prevent the proliferation of lawsuits and unnecessary expenses. Consequently, this provision should be interpreted liberally.

Illustrations:

1. In a collision between a bus owned by B and a car owned by C, resulting in injury to A, a passerby, A can sue both B and C as defendants in a single lawsuit for damages caused by negligence on the part of either or both of them, given the involvement of two vehicles.

2. In an altercation involving A, B, and C, where B and C jointly assault A, A can sue both B and C as defendants in one lawsuit for damages resulting from the tortious act, as both conditions required by Rule 3 are satisfied.

3. If B, C, D, and E each entered into separate agreements with A to supply 100 tins of oil and failed to deliver, A cannot join them as defendants in one lawsuit for damages because there are four distinct contracts and transactions involved.

Moreover, the plaintiff has the liberty to join in one lawsuit all or any of the persons severally or jointly and severally liable on any contract. Similarly, if the plaintiff is uncertain about the individual from whom they are entitled to obtain redress, they may join two or more defendants in one lawsuit.

If the court perceives that any consolidation of plaintiffs or defendants might impede or prolong the trial, it may order separate trials. Likewise, the court may render judgement for one or more plaintiffs entitled to relief against one or more defendants found liable.

Necessary and Proper Parties

A fundamental distinction exists between a necessary party and a proper party in a legal proceeding. A necessary party is indispensable to the constitution of the suit, against whom relief is sought, and without whom no effective order can be issued.

Conversely, a proper party is one whose absence does not hinder the issuance of an effective order, but whose presence is necessary for a comprehensive and definitive decision on the matter at hand. In essence, the absence of a necessary party precludes the passing of a decree, whereas the absence of a proper party allows a decree to be passed concerning the parties present before the court.

Nonetheless, the presence of a proper party enhances the court's ability to adjudicate more effectively and comprehensively.

Two criteria are established to determine whether a party is necessary to a proceeding: (i) there must be a right to relief against the party regarding the matter in question, and (ii) it should not be feasible to issue an effective decree in their absence.

For instance, in a partition suit, all sharers are considered necessary parties. Similarly, a purchaser of property in a public auction is necessary in a suit seeking to annul the auction.

Likewise, in an action challenging a selection and appointment by an authority, the selected candidates are deemed necessary parties as they are directly affected.

Conversely, a subtenant is only a proper party in a landlord's possession suit against the tenant. Similarly, grandsons are proper parties in a partition suit initiated by sons against their father.



Additionally, a local authority for whose benefit land is being acquired by the government is considered a proper party in land acquisition proceedings. Moreover, in a complaint contesting a seniority list prepared by an employer, individuals not specifically targeted for relief but appearing as senior to the petitioner/plaintiff are deemed proper parties.

However, if relief is sought against a particular individual, they become a necessary party to the proceeding.

It's worth noting that in suits where several individuals hold an interest, it's not always obligatory to join all of them as plaintiffs or defendants. Rule 8 of Order I addresses such suits, where it suffices to include some of them as plaintiffs or defendants, as appropriate.

Non-Joinder and Misjoinder of Parties

Non-joinder occurs when a person who is either a necessary or proper party to a suit hasn't been included. Conversely, misjoinder happens when two or more individuals are joined as plaintiffs or defendants in a single suit against the provisions of Order I, Rules 1 and 3, without being necessary or proper parties.

Typically, a suit cannot be dismissed solely on the grounds of non-joinder or misjoinder of parties. Furthermore, a decree rendered by a competent court based on merits won't be overturned due to misdescription of the defendant. However, this rule doesn't apply in cases of non-joinder of a necessary party.

If a person likely to be affected by the decree isn't joined as a party in the suit or appeal, the suit or appeal may be dismissed on that basis alone. Nonetheless, in the case of B. Prabhakar Rao v. State of A.P., where not all affected persons were joined as parties to the petition and only some were, the Supreme Court held that if the interests of those not joined were identical to those represented in court, the petition wouldn't be dismissed on that ground.

Similarly, no decree or order under Section 47 of the Code can be reversed or substantially altered in appeal due to any misjoinder or non-joinder of parties, provided it doesn't affect the merits of the case or the jurisdiction.

Any objections based on non-joinder or misjoinder of parties must be raised at the earliest opportunity; otherwise, they will be considered waived.

However, if the defendant raises an objection regarding the non-joinder of a necessary party at the earliest stage, and the plaintiff refuses to include the necessary party, the plaintiff cannot later seek to rectify the error by requesting an amendment during the appeal process.