case all transfers are to be ignored, there is no provision in the second case and no such provision can be read into any part of section 19-B. In regard to the surplus area in the past on the date of the commencement of the Act, the position is clear, but in regard to area coming as surplus with a landowner in future having regard to section 19-B, the situation is not so that the transfer by such a landowner is to be or can be ignored. Now, it cannot be that there has been oversight by the Legislature in this respect, for when section 19-B was inserted in the Act, clause (b) of section 10-A was already there and before the Legislature. It is only an argument of inconvenience that on this approach a landowner acquiring land by means as referred to in sub-section (1) of section 19-B, after the date of the commencement of the Act, and coming to hold area in excess of the permissible area may take advantage to reduce his area to the level of permissible area, but if the Legislature intended that he should not do so, it was open to it to meet the situation by enacting a provision of the type as in clause (b) of section 10-A. On this approach, I agree with the opinion expressed by Harbans Singh, J., and in my opinion the orders of the revenue authorities cannot be sustained because before any steps could be taken with regard to the excess area with the petitioner under section 10-B, he had already, by transfers good and valid in law, reduced his area within the limits of the permissible area. So the rule in this case is made absolute with the result that the orders of the revenue authorities are quashed as the transfers of land made by the petitioner are good and valid according to law and the area of those transfers cannot be treated as surplus area in the hands of the petitioner. The State will bear the costs of the petitioner in this petition.

R.N.M.

REVISIONAL CIVIL

Before Ranjit Singh Sarkaria, J

BANARSI DASS,—*Petitioner.*

versus

PANNA LAL AND OTHERS,—*Respondents.*

Civil Revision No. 31 of 1968.

January 12, 1968.

Code of Civil Procedure (*Act V of* 1908)—*S.* 115 *and Order* 1, Rule 10—*Application under Order* 1, *Rule* 10 *dismissed—Revision against order of dismissal—Whether maintainable—Necessary and proper parties—Meaning of—When can a party be added in a suit—Circumstances as to stated.*

Held, that a revision petition under section 115 of the Code of Civil Procedure against an order dismissing an application under Order 1, Rule 10 of the Code is maintainable. The High Court can interfere in revision if it finds that there is some material irregularity or illegality in the order.

Held, that Order 1, Rule 10 of the Code of Civil Procedure provides for addition of two kinds of parties, namely, (1) necessary parties who *ought* to have been joined and in whose absence no effective decree can be passed at all, and (2) proper parties, whose presence enables the Court to adjudicate more effectively and 'completely' all the questions involved is the suit. Under sub-para (2) of Order 1, Rule 10, a person may be added as a party to a suit in two cases only, i.e., when he ought to have been joined and is not so joined, i.e., when he is a necessary party, *or,* when without his presence the questions in the suit cannot be completely decided. There is no jurisdiction to add a party in any other case merely because that would save a third person the expense and botheration of a separate suit for seeking adjudication of a collateral matter, which was not directly and substantively in issue in the suit into which he seeks intrusion. A person cannot be added as a defendant merely because he would be *incidentally* affected by the judgment.

Held, that the Court should not ordinarily 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 litis.* He is the master of the suit. 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. If opposition by the plaintiff to the addition of parties is to be disregarded as a rule, it would be putting a premium on the undesirable practice of third parties intruding to ventilate their own grievances, into a litigation commenced by one at his own expense against another. The word 'may' in sub-rule (2) of Rule 1, of Order 10 imports a discretion. In exercising that discretion, the Courts will invariably take into account the wishes of the plaintiff before adding a third person as a defendant to his suit. Only in exceptional cases, where the Court finds that the 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 without the consent of the plaintiff.

Petition under section 115 of the Code of Civil Procedure for revision of the order of Shri K. D. Mohan, Senior Sub-Judge, Narnaul, dated 28th December, 1967, dismissing the application of the petitioner under Order 1, rule 10 of the Code.

RAJENDRA NATH MITTAL, ADVOCATE, for the Petitioner.

JUDGMENT

SARKARIA, J.—This is a civil revision directed against an order, dated 28th December, 1967, of the Senior Subordinate Judge

Narnaul, dismissing the application of the petitioner, Banarsi Dass, under Order 1 Rule 10, Civil Procedure Code, for being impleaded as a defendant in suit No. 336 instituted by Panna Lal and Banwari Lal, against Shrimati Chameli.

Shri Banarsi Dass had instituted a suit in the Court of the Subordinate Judge at Narnaul for specific performance of a contract of sale against Shrimati Chameli, widow of Udha Ram. During the pendency of that suit, Panna Lal and Banwari Lal, instituted the aforesaid Suit No. 326, dated 18th November, 1967, against Smt. Chameli for a permanent injunction restraining her from interfering with the possession of the plaintiffs over a Chabutra $4\frac{1}{2}$ Sq. ft, in area, shown in the map annexed to the plaint. In the alternatie, they prayed for possession of that property. In his application under Order 1, Rule 10, Civil Procedure Code, Banarsi Dass alleged that this Chabutra was a part of the property, which was subject matter of his suit for specific performance of contract against Smt. Chameli. He further averred that the suit brought by Panna Lal and Banwari Lal against Smt. Chameli was collusive and Smt. Chameli, by confessing judgment in that case, wanted to defeat his suit for specific performance. In short, it was urged that the decision in the suit brought by Panna Lal and Banwari Lal would incidentally affect his claim against Smt. Chameli. The Subordinate Judge dismissed the petition, holding that Banarsi Dass was neither a necssary nor a proper party to be added as a defendant in the suit instituted by Panna Lal and another. He, therefore, dismissed his application.

The first question to be considered, is, whether this revision petition against an order dismissing an application under Order 1, Rule 10, Civil Procedure Code, is maintainable. There is divergence of judicial opinion on this point. Some of the High Courts have held that no revision lies against such an order. But the weight of authority seems to be in support of the view that the High Court can interfere in revision under section 115 of the Code of Civil Procedure, if it finds that there is some material irregularity or illegality in the order. Though the point was not directly discussed, this view is implicit in the decisions of this Court reported as *Inder Singh and another* v. *Hazar Singh and others* (1) and *Panjab University* v. *Arya Pratinidhi Sabha, Punjab and others* (2), *Dewan Bahadur Seth Umed Mal and others* v. *Chand Mal* (3) also lend support to that view. I would, therefore, answer this question in the affirmative.

(1) A.I.R. 1951 Punj. 352.
(2) 1968 P.L.R. 98.
(3) 1926 P.C. 142.

As regards the merits of the case, I do not find any good ground to issue notice to the respondent. Order 1, Rule 10, Civil Procedure Code, provieds for addition of two kinds of parties, namely, (1) necessary parties, who *ought* to have been joined and in whose absence no effective decree can be passed at all, and (2) proper parties, whose presence enables the Court to adjudicate more 'effectively and completely' all the questions involved in the suit. It is admitted by the counsel for the petitioner that Banarsi Dass was not a necessary party to the suit instituted by Panna Lal and another against Shrimati Chameli. Nor does he maintain that Banarsi Dass's addition as defendant in the suit brought by Panna Lal, etc., against Shrimati Chameli would be necessary to decide 'effectively ad completely' the issues arising between Panna Lal, etc., and Mst. Chameli *in that suit*. All that the learned counsel says is that the collusive decree that might be passed in favour of Panna Lal, etc., will indirectly injure his interests in the suit for specific performance brought by him against her, and thus force him to institute another suit against Panna Lal and Shrimati Chameli with regard to that collusive decree. If Banarsi Dass is added as a defendant in the suit brought by Panna Lal, etc., that would, according to the learned counsel, avoid multiplicity of suits.

I am afraid, the contention cannot be accepted. Under sub-para (2) of Order 1, Rule 10, Civil Procedure Code, as already observed, a person may be added as a party to a suit in two cases only, i.e., when he ought to have been joined and is not so joined, i.e., when he is a necssary party, *'or'* when without his presnce the questions in the suit cannot be completely decided. In my opinion, there is no jurisdiction to add a party in any other case merely because that would save a third person the expense and botheration of a separte suit for seeking adjudication of a collateral matter, which was not directly and substantively in issues in the suit into which he seeks intrusion. The leading authority on the point is the English case, *Moser* v. *Marsden* (4). The plaintiff, in that case was the patentee of a machine. He brought an action against the Defendant for using a machine, which he alleged was an infiringement of his patent. M., the maker and patentee of the Defendant's machine, applied to be added as a defendant, alleging that a judgment in the action would injure him, and that the present Defendant would not efficiently defend the action. It was held that M., not being directly

(4) (1892) 1 Ch. 487.

interested in the issues between the Plaintiff and Defendant, but only indirectly and commercially affected, the Court had no jurisdiction to add him as a defendant. The judgment in that case turned on an interpretation of Order XVI, rule 11, of the Supreme Court, which is in *pari materia* with Order 1, Rule 10(2) of the Code of Civil Procedure. The following observations of Lord Justice Lindley would be useful:—

> "...... It cannot be said that the case comes within that part of the rule which provides that the Court may order the names of any parties, whether plaintiffs or defendants, "who ought to have been joined," to be added. In no sense can it be said that Montforts ought to have been joined as a party to this action. But reliance is placed on the following words of the rule, which provide for adding the names of parties "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 cause or matter'. But what is the question involved in this action. The question, and the only question is whether what Marsden is doing is an infringement of the Plaintiff's patent ... Can it be said that, the rule prevents the Plaintiff from proceeding against a defendant without having to litigate with every body who may be in any way affected, however, indirectly, by the action ? It appears to me that it does not. The counsel for the Applicant grounded his argument on the allegation that Montforts' interest would be affected by the decision in this action. It is true that his interest may be affected commercially by a judgment against the Defendant, but can it be said that it would be legally affected? Can we stretch the rule so far as to say that whenever a person would be incidentally affected by a judgment he may be added as a defendant?"

I am in respectful agreement with the above observation in *Moser's case.* The law in India on this point is the same, i.e., a person may not be added as a defendant merely because he would be *incidentally* affected by the judgment.

Moreover, If Banarsi Dass, were to be added as a defendand in the suit commenced by Panna Lal, etc., it would amount to introduction of a new cause of action. The Court would then have to enquire into the circumstances under which Shrimati Chameli's agreement

with Banarsi Dass was entered, an enquiry with which Panna Lal and Banwari Lal had nothing to do. Such a course will supplant Panna Lal's case altogether and would, in substance, drag him into a different controversy between Banarsi Dass and Shrimati Chameli.

There is difference of judicial opinion among the High Courts on the question, whether the Court has power under Order 1, Rule 10, Civil Procedure Code, to direct a person to be impleaded as a defendant when the plaintiff is opposed to his addition as a party. The Jammu and Kashmir High Court in *Sampatbai* v. *Badhu Singh* (5), and Andhra Pradesh High Court in *Razia Begum* v. *Anwar Begum* (6), have taken the view that the Court has the power to implead a party if it considers that his presence is necessary or proper for disposing of the case, and that an order under the aforesaid rule can be made even if the plaintiff does not consent. On the other hand, the Madras High Court in *Pryaga Dass* v. *Board of Commissioners* (7), *Abdul Razak* v. *Mohammad Shah* (8), the Madhya Pradesh High Court in *Mujtabai Begum* v. *Mehbab Rehman* (9), and the Andhra Pradesh High Court in *Motiram Roshanlal Coal Co.,* v. *District Committee, Dhanbad* (10), have held that no person can be brought on record as defendant, if the plaintiff does not want him, and that if he is a necesary party the suit must fail on account of his non-joinder.

I would prefer to steer a middle course and draw the golden mean. 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 litis*. He is the master of the suit. 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. If opposition by the plaintiff to the addition of parties is to be disregarded as a rule, it would be putting a premium on the undesirable practice of third parties intruding to ventilate their own grievances, into a litigation commenced by one at his own expense against another. The word 'may' in sub-rule (2)

(5) A.I.R. 1960 J. & K. 67.
(6) A.I.R. 1958 A.P. 195.
(7) A.I.R. 1950 Mad. 34.
(8) A.I.R. 1962 Mad. 346.
(9) A.I.R. 1939 M.P. 359.
(10) A.I.R. 1962 A.P. 357.

imports a discretion. In exercising that discretion, the Courts will invariably take into account the wishes of the plaintiff before adding a third person as a defendant to his suit. Only in exceptional cases, where the Court finds that the 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 without the consent of the plaintiff. An instance of such exceptional case is furnished by the one reported as *Razia Begum* v. *Anwar Begum* (6). In that case, the plaintiff had sought a declaration that she was the legally wedded wife of the defendant, and the applicant sought to be added as a defendant to contest the claim. The applicant claimed to be another married wife of the defendant. The prayer was granted on the consideration that the declaration of the status of the party acts, more or less, in form and affects the parties for generations to come. The case before me is not an exceptional case of that kind.

Still there is another aspect of the matter which has been discussed by the learned subordinate Judge in his order. Banarsi Dass has yet no vested right in the property which is the subject matter of his suit for specific performance. He is still striving to establish his right to the property. So far his right is merely inchoate. He cannot, therefore, be said to be a person whose rights would be legally affected by the decree in Panna Lal's suit.

For all the reasons aforesaid, I do not find any force in this petition, which I hereby dismiss *in limine.*

R. N. M.

APPELLATE CRIMINAL

Before J. S. Bedi, J.

RAM RATTAN,—*Appellant.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 810 of 1967.

January 25, 1968.

Arms Act (LIV of 1959)—*S.* 2(*c*)—Gandasa—*Whether an "arm".*

Held, that the word "adapted" in the definition of "arms" in section 2(c) of the Arms Act, 1959 is significant. *Gandasa* is a sharp-edged weapon and is adapted and designed as a weapon for offence or defence. Many murders are