



Parties of Suit

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Introduction:

- Provision: Section – 26 and Order – I
- Meaning of Suit: referring to any proceeding by one person against another person in a court of law wherein a plaintiff pursues the remedy which the law affords him for the redress of any injury or the enforcement of law.
- Essentials of suit:
 - Opposing parties
 - Subject matter of suit
 - Cause of action
 - Relief

Section – 26: Institution of Suit

- Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.
- In every plaint, facts shall be proved by affidavit:
- Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of rule 15A.

Order – I, Rule 1 - 13

- 1. Who may be joined as plaintiffs.
- 2. Power of Court to order separate trials.
- 3. Who may be joined as defendants.
- 3A. Power to order separate trials where joinder of defendants may embarrass or delay trial.
- 4. Court may give judgment for or against one or more of joint parties.
- 5. Defendant need not be interested in all the relief claimed.
- 6. Joinder of parties liable on same contract.

- 7. When plaintiff in doubt from whom redress is to be sought.
- 8. One person may sue or defend on behalf of all in same interest.
- 8A. Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings.
- 9. Misjoinder and nonjoinder.
- 10. Suit in name of wrong plaintiff. Court may strike out or add parties. Where defendant added, plaint to be amended.
- 10A. Power of Court to request any pleader to address it.
- 11. Conduct of suit.
- 12. Appearance of one of several plaintiffs or defendants for others.
- 13. Objections as to nonjoinder or misjoinder.

Parties to Suit: Order - I

- Introduction
- Complaint: a private memorial tendered to a court in which the person sets forth his cause of action, the exhibition of an action in writing.
- Joinder of parties
- When such question may come?
- One against another
- One against more and vice versa

Joinder of Plaintiff: Rule - I

- Who may be joined as plaintiffs.—
- All persons may be joined in one suit as plaintiffs where—
- (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and
- (b) if such persons brought separate suits, any common question of law or fact would arise.

Illustrations:

- A enters into an agreement jointly with B and C to sell 100 tins of oil. A thereafter refuses to deliver the goods.
- Here, both, B and C, have each of them a right to recover damages from A.
- The said right arises out of same transaction, namely, the breach of agreement.
- And common question of law or fact would also arise.
- B and C, therefore, may file a suit jointly as plaintiffs against A for damages.

Joinder of Defendants: Rule - 3

- Who may be joined as defendants.—
- All persons may be joined in one suit as defendants where—
- (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and
- (b) if separate suits were brought against such persons, any common question of law or fact would arise.

illustrations

- There is a collision between a bus and a car.
- The bus belongs to B and car belongs to C.
- As result of collision, A, a passer-by is injured.
- A may join B and C as defendants in one suit for damages for injuries caused to him by negligence on the part of the both or any of them.
- Since the case involves common questions of fact arising out of the same act, namely, collision of two vehicles.

Necessary and proper parties

- There must be a right to some relief against such party in respect of the matter involved in the proceeding in question;
- It should not be possible to pass an effective decree in absence of such a party.

Non-Joinder of Parties

- A person, who is a necessary and proper party to a suit
- Has not been joined as a party to the suit
- It is a case of non-joinder.

Mis-Joinder of Parties

- If two or more person joined as plaintiffs and Defendants in one suit
- In contraventions of Order – I R- 1 and 3 respectively and
- They are neither necessary and proper parties to the suit
- It is a case of misjoinder of parties to suit.

objections

- All the objections pertains
- Nonjoinder
- Misjoinder of parties must be taken at the earliest opportunity
- Otherwise, they will be deemed to have been waived.
- If it is taken at the earliest stage, then? And
- If the plaintiff declined, then?
- He cannot be subsequently allowed in appeal to rectify the error by applying for amendment.

Striking out parties

- Where the suit has been instituted in the name of wrong person
- On application or sue moto
- Satisfaction of the court, as to Bonafide mistake
- Determination of real question
- Order, to struck out the either of the party

Additions

- Whose presence is necessary before the Court ?
- To completely and effectively adjudicate the matter
- To settle down all the questions involved in the suit

Substitution of parties

- Abatement of suit
- Application
- Order for substitution

Transposition of Parties

- Person is already on record as party
- Change of capacity
- From plaintiff to defendant or vice versa
- To avoid multiplicity of suit
- Application or *suo-moto*
- Alteration of character of the suit – then, NO
- Cause prejudice to opposite party
- Order for transposition.