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ORDER 1
RULE 10 OF
CPC

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“10. Suit in name of wrong plaintiff or non-joinder and misjoinder of parties.

(1) Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right person, the court may at any stage of the proceedings order that the person who ought to have been plaintiff shall be substituted, or be added as plaintiff. No suit shall be defeated by reason of misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

(2) The court may at any stage of the proceedings —

- (a) order that the name of any party improperly joined shall be struck out; and
- (b) order that the name of any person who ought to have been joined, 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, shall be added

(3) No person shall be ad

ded as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended, and the amended copies of the summons and the plaint must be served on the person so added.

(5) The proceedings as against any person added as defendant shall be deemed to have begun only on the service of summons on him.”

This rule thus empowers the court to **add, strike out or substitute parties** so as to avoid the suit failing on technical grounds of misjoinder or non-joinder. The underlying purpose is to ensure that *“all the questions involved in the suit”* can be effectively and completely adjudicated once, without needless multiplicity of litigation. In short, Order I Rule 10 acts as a remedial

provision to include or remove parties at any stage, so that justice is not thwarted by improper naming of plaintiffs/defendants.

Conditions and Purpose of Impleadment/Striking Parties

Order I Rule 10(2) is a **discretionary power**. Courts exercise it to add (implead), delete (strike out) or substitute parties in the interest of justice. The key conditions and considerations are:

- **“Direct and Substantive Interest”**: The person to be added must have a **defined, subsisting legal interest in the subject-matter**. In *Mahadeva Rice & Oil Mills v. Chennimalai Gounder* (AIR 1968 Mad 287), it was held that only a party with “a defined, subsisting, direct and substantive interest in the litigation” can be impleaded. In other words, the court looks for a **legal or equitable right** of the proposed party that is affected by the suit. Mere commercial or collateral interest is not enough.

- **Effectual Adjudication / Avoiding Multiple Suits:**
Impleadment is justified if **without that person's presence no complete decree can be passed** and all issues cannot be fully settled. Order I Rule 10(2) explicitly requires that a party may be added whose presence is "*necessary in order to enable the court effectually and completely to adjudicate*" all questionssites.google.com. Thus, if a proposed party's absence would leave a gap (necessitating a second suit), the court can add them to ensure a single final adjudication. For example, in partition suits all co-owners must be joined; otherwise the decree would be incomplete
- **Dominus Litis (Plaintiff's Prerogative):** The plaintiff is prima facie the "master of the suit" (dominates litis) and has authority to choose his opponent. Courts respect this, and generally **will not compel the plaintiff to litigate against someone he has chosen not to sue**. Thus, even if a third party could in theory be interested, he cannot be forced to

be joined as a defendant unless he has a *direct and legal interest* in the suit's subject. This principle was emphasized by the Supreme Court: one cannot invoke Rule 10(2) to add a person unless that person has a direct, legal interest in the controversy.

- **Preventing Abuse / Collateral Issues:** Courts guard against impleading persons “to ventilate collateral grievances” or widen the suit improperly. If adding a party would simply introduce unrelated issues or prejudice the existing parties, the court should refuse. The discretion must not be exercised “*according to whim or caprice*” but guided by the need for fair, final adjudication.
- **No Power to Add Unnecessary Persons:** If a person is **neither necessary nor proper**, the court has no jurisdiction to add them. In other words, if the controversy between existing parties can be resolved

without bringing in the third person, Rule 10 must not be used to force their joinder.

- **Consent for Plaintiffs under Disability:** A specific safeguard exists: no one can be impleaded as a plaintiff (especially as a next friend of a minor) **without his consent**. This ensures the autonomy of those under disability and prevents unwelcome joinder.
- **Remedy for Wrong Plaintiff (Rule 10(1)):** Under sub-rule (1), if a suit was inadvertently filed in the name of the wrong plaintiff, the court can **substitute or add** the correct plaintiff. However, this relief is confined to *bona fide* mistakes. The Supreme Court held that Rule 10(1) applies only where the original plaintiff honestly and reasonably believed he had the right to sue; if the wrong naming was due to carelessness or malafide, Rule 10 cannot be used. In *Competition Comm'n of India v. SAIL* (2010) 10 SCC

744, the Court observed that unless the court is satisfied the suit was started in the wrong name by a bona fide mistake, it has no power to add or substitute under Rule 10(1)

- **Completing Court Process:** If a defendant is added, the plaint must be amended and fresh process served as required by sub-rule (4). Proceedings against the newly joined defendant commence only from service of summons on him. This ensures due process is followed for any new party.

In sum, Order I Rule 10 is aimed at **upholding justice over technicality**. It allows the court to reshape the roster of parties for a comprehensive final decision. The court must justify its order (and record reasons) when adding or refusing to add parties, exercising its wide discretion responsibly.

Illustrative Examples

- **Wrong Plaintiff:** A suit was filed in the name of A seeking specific performance of a sale agreement, but

B (the vendor) had the actual contractual right to sue. Under Rule 10(1), the court may substitute *B* as plaintiff if the mistake was bona fide. This avoids dismissing the suit on a mere technicality.

- **Non-joinder of a Necessary Party:** A city sues a landlord to evict a tenant. If the tenant's spouse holds a joint lease, the spouse's rights would be affected by the decree. The court can implead the spouse as a defendant so that its order binds everyone interested. Similarly, in partition of a house, every co-sharer must be joined; failing to implead one would render any decree incomplete.
- **Specific Performance with Third-Party Claim:** P contracted to buy land from S. P sues S for specific performance. During the suit, a third person T claims he holds title under a sale deed from S (an adverse title). T is *not* a party to the contract. As *Kasturi v. Iyyamperumal* (2005) taught, T is neither a necessary

nor proper party, since a specific performance decree relates only to parties to the contract. Impleading T would convert the suit into a title action, which Rule 10 forbids. (By contrast, if T had *bought the contract right* from P or S *pendente lite*, he could be impleaded to protect his vested right – Section 19(b), Specific Relief Act.)

- **Missing Party Affecting Relief:** In a suit for recovery of money, suppose the plaintiff sues only one of two joint debtors. The plaintiff can apply to add the co-debtor under Rule 10(2), since relief (recovery of full debt) cannot be obtained without him.
- **Striking out Irrelevant Party:** If a plaintiff wrongly sues a person who has no connection to the dispute, the defendant can apply to strike that person's name off under Rule 10(2), to prevent unnecessary litigation.

Landmark Judgments (Supreme Court)

Several Supreme Court decisions have crystallized the principles of O.1 R.10:

- **Sulthan Said Ibrahim v. Prakasan & Ors. (2025).** A two-judge bench (Pardiwala, J.; Mahadevan, J.) reiterated that O.1 R.10(2) “empowers the court to allow addition, substitution or deletion of a party... at any stage of the proceedings”. The Court clarified that “at any stage” does not mean open-ended re-agitation of issues already finally decided. (This recent case focused on avoiding repeated objections at successive stages.)
- **Mumbai Int’l Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd. (2010) 7 SCC 417.** The Supreme Court held that the test for a “necessary” or “proper” party is whether his presence is **essential for full adjudication** of the dispute. In this case, the Court emphasized that a person whose absence leaves issues undecided (or requires parallel litigation) is necessary, whereas one with only a “commercial or academic interest” in the outcome is not. The Court distinguished necessary parties

(indispensable for a complete decree) from proper parties (beneficial for full settlement) and ruled that non-joinder of a proper party would not void the suit, but absence of a necessary party would.

- **Kasturi v. Iyyamperumal & Ors.** (2005) 6 SCC 733. This three-judge bench dealt with a suit for specific performance. It held that *only* the original parties to the contract (and those claiming under them) are indispensable. A third party claiming independent title cannot be impleaded merely to find out possession or avoid a second suit. In *Kasturi* the Court famously said the plaintiff (dominant suit master) “cannot be compelled to contest the suit” against someone he did not choose as a defendant; hence Rule 10(2) cannot be used to add any person unless he has a direct legal interest in the controversy.
- **Ramesh Hirachand Kundanmal v. Municipal Corp. of Bombay** (1992) 2 SCC 524. The Court allowed impleadment of a third party in a suit arising under the Land Acquisition Act. It held that if a third party’s

absence would prevent a final just order, he can be added even over objections. The judgment emphasized that impleadment under Rule 10 is to ensure all questions can be resolved in one proceeding (avoiding a second suit); where necessary, the court must add that party.

- **Sumtibai v. Paras Finance Co.** (2007) 10 SCC 82. In a departure from Kasturi's strict rule, the Supreme Court held that a person who acquires pendente lite rights (e.g. by sale from plaintiff or vendor) can be impleaded to protect his title. The Court noted that even a third party showing "some semblance of title or interest" in the property may be joined. (This case carved out the well-known exception that an assignee pendente lite, by virtue of Section 19(b) of the Specific Relief Act, may be brought in.)
- **Thomson Press (India) Ltd. v. Nanak Builders & Inv. Ltd.** (2012) 3 SCC 142. The Supreme Court held

that an assignee in a suit for specific performance (one who steps into the shoes of a party to the contract) must be made a party, even if added pendente lite This ensures that a substituted legal proprietor can defend the suit or have the decree enforced against him.

- **CCI v. SAIL** (2010) 10 SCC 744. In this competition-law case, the Court applied Rule 10(1) rules, holding that substitution of a party is only permissible on proof of a genuine mistake. It affirmed that Rule 10(1) cannot be invoked for careless or fraudulently named plaintiffs.

These and other cases establish that Order I Rule 10 is to be construed liberally in favor of inclusion of parties when warranted, but always within the confines of necessity and justice

Expert Commentary

Leading commentators note that Order I Rule 10 embodies the policy of substantive justice. Mulla's *CPC* explains that

Rule 10(1) “discourages contests on technical pleas” and saves honest claimants from being non-suited by clerical errors. Commentators emphasize that Rule 10(2) vests a **wide discretion** in the court to add or drop parties. However, this discretion must be exercised “according to reason and fair play, and not according to whim or caprice” i.e. guided by principle. The court must record its reasons for impleading or refusing to implead (as an appellate court has held) to ensure accountability.

Takwani’s commentary (in *Takwani on CPC*) similarly outlines that the statute’s aim is to avoid multiplicity: all persons needed for the “**effectual and complete settlement**” of the controversy should be joined. Thus, wise judicial practice under Rule 10 is to “**bend rather than break**” suits by adding or dropping parties as justice requires, so long as those parties have a true stake in the dispute

In sum, **Order I Rule 10** is a flexible tool to amend the lineup of parties. Its purpose is to bring in all who have a real interest (“necessary” or “proper” parties) so that every question may be resolved in one go. Courts have

repeatedly stressed that omission or misjoinder of such parties should not derail a litigation; conversely, a plaintiff's fundamental right to pick his opponents means one cannot be added unless truly needed by law