

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 21183 of 2022**

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ASHVINKUMAR MUKTILAL SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR. JAIMIN R DAVE(7022) for the Petitioner(s) No. 1,2

PRIYANK S DAVE(9465) for the Petitioner(s) No. 1,2

for the Respondent(s) No. 6

MS FORUM U. TRIVEDI AGP for the Respondent(s) No. 1

SERVED BY RPAD (N) for the Respondent(s) No. 2,3,4,5

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**CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA**

**Date : 31/07/2023**

**ORAL ORDER**

1. By way of this petition under Article 227 of the Constitution of India, the petitioners seek to challenge the order passed by the learned 3<sup>rd</sup> Additional Civil Judge, Palanpur, dated 29.08.2022 below application Exh. 38 preferred by the petitioners - third party for being joined as a party defendants in the suit no. RCS No. 16 of 2017 filed by the respondents for possession of the rented premises.
2. Facts and circumstances giving rise to file present petition are that, the petitioners are sons of deceased Muktilal Shah, who was inducted in the suit premises as a tenant on monthly rent. Deceased Muktilal Shah was having 5 sons namely, Ashvin, Kamlesh, Nilesh, Piyush and Sanjay. After sad demised of said Muktilal Shah and his wife Vimlaben, suit for possession of the rented

premises is filed only against the two sons of Muktilal Shah, namely Piyush Shah and Sanjay Shah. Sanjay Shah and Nilesh Shah died during the proceedings of the Civil Suit. The present petitioners being legal representatives and heirs of the deceased, moved an application Exh. 38, inter-alia, stating that, after sad demised of their father, they have right and interest over the suit premises as they are in the joint possession with the others, therefore, their presence before the court is necessary and proper and prayed that they may be joined as a party defendants in the suit. The Court below after hearing the parties, while rejecting the application Exh. 38 observed that, the plaintiffs have not claimed any relief against the petitioners and plaintiffs being a *dominus-litus*, the petitioners claimed to be joined in the suit is not acceptable. The court below has further held that, for deciding the real matter in the dispute, the presence of the petitioners is neither necessary nor proper. The Court has also observed that, the petitioners failed to show their possession and usages of the suit premises and on that ground also, they cannot be said to be proper and necessary parties.

3. This Court has heard learned counsel Mr. Jaimin Dave, appearing for and on behalf of the petitioners. Though served, none appears for and on behalf of the original plaintiffs.
4. Mr. Jaimin Dave, learned counsel has submitted that, the court below has committed the error, which is manifest and apparent on the face of the proceedings as the order is passed in utter disregard of the provisions Order 1 Rule 10 of the Code and the tenancy

laws, which has caused grave injustice to the petitioners. The petitioners are sons of deceased Muktilal Shah and therefore, after sad demise of his father and mother, the petitioners are entitled to claim the tenancy rights over the subject property and therefore, for the effective adjudication of the suit and to avoid the multiplicity of proceedings, their presence is necessary and proper.

5. In the aforesaid contentions, he has submitted that, the court below has mainly emphasized on the issue of possession and has overlooked the position of law, as without their being actual possession, the petitioners being legal heirs of the deceased tenant can contest the suit. Thus, therefore, the order impugned is not sustainable in law, as the court below failed to exercise its jurisdiction vested on it and same may be quashed and set aside.
6. Having heard the learned counsel for the petitioners and on perusal of the impugned order, this court is of the considered view that, the court below ought to have exercised jurisdiction in favour of the petitioners by allowing the application Exh. 38. It is undisputed facts that the petitioners are legal heirs of the deceased and at the time of filing the suit, they have not been joined as defendants. In the facts of the present case, only two sons of the deceased were initially joined as a defendants and during the suit proceedings, out of two, one son namely Sanjaybhai died in a natural way. The petitioners have settled at Surat but they still have not surrendered their rights over the suit premises and have claimed the tenancy rights in relation to the suit premises. It is settled law that, in a case of addition of party, the trial Court shall have to exercise its

judicial discretion after considering the facts and circumstances of particular case. Normally, the court should not add a person as a defendant when the plaintiff is opposing such addition, the reason is that, the plaintiff is the *dominus-litus*, and he may choose the person, against whom he wishes to litigate and cannot be compelled to sue a person, against whom he does not seek any relief. However, it is also settled position of law that, if the court is satisfied about the claim and genuineness of the interest in the litigation, the court may exercise its jurisdiction to avoid multiplicity of proceedings.

7. Reverting back to the facts of present case, the petitioners being legal heirs of deceased tenant, seek permission to join them as a party defendants. The Court below still has not determined the tenancy rights of the deceased's legal representatives and therefore, considering the claim put forward by the petitioners herein with respect to suit premises, the court below ought to have granted permission to join them as a party defendants for deciding the dispute and to avoid multiplicity of proceedings. Thus, though the petitioners are not necessary parties but they are proper parties and their presence is necessary. If plaintiff will succeeds in suit, then, to avoid the issue of its executability, the court below could have been permitted the petitioners to be jointed as party defendants.
8. For the foregoing reasons, the impugned order refusing to impleadment the petitioners as party defendants is not sustainable in law and is hereby quashed and set aside. Accordingly, present petition as well as Exh. 38 is allowed to aforesaid extent. The

necessary amendment be carried out henceforth. The observations made hereinabove is tentative in nature and is confined for the decision of issue raised in the application Exh. 38. The trial Court shall decide the suit on its own merits in accordance with law without their being any influenced by the observations made hereinabove.

P.S. JOSHI

**(ILESH J. VORA,J)**