

RUMA CHAKRABORTY  
v.  
SUDHA RANI BANERJEE AND ANR.

OCTOBER 4, 2005

[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

*Code of Civil Procedure, 1908—Order 1, Rule 10(2)—Addition of defendants—Requirement of being either a necessary party or a proper party—Eviction suit on ground of sub-letting—Landlady alleging that appellant, the divorced wife of tenant, was in illegal occupation without prior written consent—Tenant not residing in the suit premises—But contesting the suit pleading that appellant was residing in the suit premises only as custodian of his minor children—Application filed by appellant for impleadment as a party defendant—Maintainability of—Held, not maintainable—There was no privity of contract between appellant and the landlady—Appellant had no locus standi to be impleaded as a necessary or a proper party—Tenancy—West Bengal Premises Tenancy Act, 1956—Sections 2(d), 2(h) and 13(1)(a).*

*Hindu Adoptions and Maintenance Act, 1956—Sections 3(b), 18 & 23—Hindu Marriage Act, 1955—Sections 25 and 13B—Divorced wife—Entitlement to maintenance (including residence)—Terms and conditions of the divorce decree—Effect of—On facts, while dissolving marriage, Matrimonial Court with consent of the parties had ordered the husband to pay for maintenance of the minor children only—Held: Wife by such consent order expressly waived her right to maintenance.*

**Respondent no.1-landlady filed eviction suit alleging that after dissolution of marriage of the tenant (Respondent No.2), his divorced wife was reduced to the status of a rank outsider/stranger and that she was in illegal occupation of the suit premises without prior written consent of the landlady, hence became liable to eviction under S.13(1)(a) of the West Bengal Premises Tenancy Act, 1956. Respondent No.2 had effaced himself from the suit premises long prior to the institution of the suit. He contested the suit by filing written statement. He contended that the appellant was residing in the suit premises only as the custodian of his minor children who had every right to continue in possession of the suit premises as**

A members of his family.

Appellant, the divorced wife of the tenant, filed application under Order 1, Rule 10(2) for being impleaded as a party defendant almost 8 years after institution of the suit. Trial Court dismissed the application. High Court concurred with the decision of Trial Court.

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In appeal to this Court the question which arose for consideration is whether the appellant is directly interested in the tenanted suit premises by way of her entitlement towards maintenance which includes residence and had a right to be impleaded as a party defendant in the said eviction suit as a necessary or a proper party.

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Dismissing the appeal, the Court

HELD: 1.1. The Trial Court and the High Court did not commit any jurisdictional error nor acted with material irregularity in dismissing the application under Order 1 Rule 10 C.P.C. filed by the appellant.

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[1072-A-B]

1.2. The Court has no jurisdictional power to add a person as a party who is neither a necessary party nor a proper party. The appellant in the status of divorcee cannot claim interest in the suit premises either independently or through her erstwhile husband and as such she cannot be held to say that she is a party without whose presence the Court cannot adjudicate and pass the decree. She is, therefore, not a necessary party. The appellant is also not a person whose presence is necessary to enable the Court effectually and completely to adjudicate all the questions involved in the suit. [1071-F-G-H]

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1.3. Respondent No.2. contested the eviction suit by filing written statement from which it is seen that he never allowed the appellant to occupy the suit premises and that she is in possession of the suit premises only as a custodian of the minor children of respondent no.2 and that the monthly rents payable are being paid on account and on behalf of respondent no.2. Therefore, the appellant has no *locus standi* to be impleaded in the suit either as a necessary or a proper party in whose presence the suit ought to be or should be heard. The appellant has no right to contest or defend herself nor a right to file and prosecute the eviction proceedings. There is no privity of contract between the appellant and the landlady. [1064-A-B; 1070-C-D]

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*Khetrabasi Biswal v. Ajaya Kumar Baral and Ors.*, [2004] 1 SCC 317; *Dattatreya and Ors. v. Mahaveer and Ors.*, [2004] 10 SCC 665 and *Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, Orissa and Ors.*, [1964] 7 SCR 596, referred to. A

*Dr. H.S. Rikhy and Ors. v. The New Delhi Municipal Committee*, [1962] 3 SCR 604; *Razia Begum v. Sahebzadi Anwar Begum and Ors.*, AIR (1958) SC 886; *Dr. A.K. Roy v. J.C. Roy Choudhury and Anr.*, AIR (1982) Calcutta 8; *Bibi Zubaida Khatoon v. Nabi Hassan Saheb and Anr.*, [2004] 1 SCC 191; *Vijay Lata Sharma v. Raj Pal and Anr.*, [2004] 6 SCC 762; *Balvant N. Viswamitra and Ors. v. Yadav Sadashiv Mule and Ors.*, [2004] 8 SCC 706; *B.P. Achala Anand v. S. Appi Reddy and Anr.*, [2005] 3 SCC 313; *Kumar Jagdish Chandra Sinha and Ors. v. Eileen K. Patricia D'Rozarie (Mrs)*, [1995] 1 SCC 164 and *India Umbrella Manufacturing Co. and Ors. v. Bhagabandei Agarwalla and Ors.*, [2004] 3 SCC 178, referred to. B C

*Hutchinson v. Hutchinson*, [1947] 2 All ER 792; *Middleton v. Baldock*, [1950] 1 All ER 708 and *Old Gate Estates, Ltd. v. Alexander and Anr.*, [1949] 2 All ER 822, distinguished. D

*Brown v. Draper*, [1944] 1 All ER 246, referred to.

2.1. A perusal of Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 would clearly show that the intention of the legislature by including food, clothing, residence etc. was to provide a real maintenance and not a bare or starving maintenance. The intention of the legislature is further indicative from the words "also the reasonable expenses of" appearing in clause (ii) of Section 3(b), clearly meaning thereby that an unmarried daughter besides the expenses of food, clothing, residence etc. is also entitled to the expenses of and incident to her marriage. The intention of the legislature becomes absolutely clear and lucid from the heading and contents of Section 23 of the Hindu Adoptions and Maintenance Act, 1956 which speaks of amount of maintenance. Therefore, it can safely be said that what is implicit under Section 3 is made explicit in Section 23. [1061-H; 1062-A-B-C] E F G

2.2. In the instant case, while dissolving the marriage under Section 13-B of the Hindu Marriage Act, 1955, the matrimonial Court with the consent of the parties ordered respondent No.2 to pay a sum of Rs. 200 p.m. for maintenance of the minors only. The appellant by such consent order has expressly waived her right to maintenance. [1062-B-C] H

**A** 3.1. It was argued that the appellant was recognised by respondent no.1-landlady as a sub-tenant. In support of the said submission, reliance was placed on a letter written by the landlady to the appellant. But this letter is of no aid or assistance to the appellant. [1071-C-D]

**B** 3.2. It has been stated in that letter that the appellant has been paying the rent on behalf of one Duttas and occupying the said accommodation. The appellant was requested to get a confirmation in writing that he has no interest in the ground floor accommodation of the house in question and surrender the possession of the same to the landlady so that the agreement could be entered into with the appellant on fresh terms if the appellant proposed to continue to stay there. The letter was concluded by saying that until these formalities are completed the occupation of the ground floor accommodation by the appellant is unauthorised and illegal. Therefore, one cannot agree with the submission of the appellant that the landlady has so recognized the appellant as sub-tenant. [1071-D-E-F]

**D** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2565 of 2001.

From the Judgment and Order dated 26.9.2000 of the Calcutta High Court in C.O./C.R. No. 582 of 2000.

**E** Ms. Kamini Jaiswal, Ms. Sunita Dwivedi, Ms. Shomila Bakshi and Ms. Rani Mishra for the Appellant.

Rana Mukherjee, Sidharth Gautam and Goodwill Indeevar for the Respondents.

The Judgment of the Court was delivered by

**F** **DR. AR. LAKSHMANAN, J.** The appellant, who is an unsuccessful intervenor in both the courts below, is the divorced wife of the recorded sole tenant (second respondent herein) who is also the sole defendant in the suit filed by the first respondent herein - Sudha Rani Banerjee.

**G** The instant appeal is against the judgment and order dated 26.09.2000 passed by the High Court of Calcutta in C.O. No. 582 of 2000 rejecting the appellant's application for being added as a party defendant under Order I Rule 10 (2) of the C.P.C. The High Court concurred with the judgment and order dated 02.02.2000 passed by the IIrd Civil Judge, Alipore. The High Court rejected the plea of the appellant that she is directly interested in the tenanted suit premises by way of her entitlement towards maintenance which

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includes residence as per the Hindu Adoptions and Maintenance Act, 1956. A

The facts of the case, in brief, are as follows:-

As already stated the action arises out of a suit for ejectment filed on 28.03.1992 on the ground of default, subletting without the prior written consent of the contesting first respondent herein (plaintiff landlady). Her case, very briefly, is that after dissolution of the marriage, the appellant is no longer a part of the proforma respondent's family having the status of a rank outsider/stranger and she was in illegal occupation of the suit premises in contravention of the statutory provisions of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as 'the Act'). The proforma respondent/husband has admittedly effaced himself from the suit premises long prior to the institution of the suit retaining any control of suit premises. It is the case of the contesting respondent that the appellant is in illegal occupation without the prior written consent of the landlady and, therefore, has attracted the provisions of Section 13 (1)(a) of the Act and has become liable for eviction. B  
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The sole defence taken in the suit is that the son and daughter are entitled to the tenancy right and virtually can step into the shoes of the recorded tenant who is still alive and contesting the suit who is long back walked out of the suit premises parting with exclusive legal possession to the appellant. D

The appellant filed application under Order 1 Rule 10 (2) C.P.C. for being impleaded as a party defendant before the Civil Judge, Alipore on 17.12.1999 almost 8 years after the institution of the suit. The Civil Judge dismissed the appellant's application on 02.02.2000. The appellant, thereafter, moved the High Court in civil revisional jurisdiction and the High Court, by its judgment and order dated 26.09.2000, rejected the appellant's application concurring with the finding of the courts below and finding no infirmity therein. Being aggrieved, the appellant has preferred the above appeal in this Court. E  
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We heard Ms. Kamini Jaiswal, learned counsel for the appellant and Mr. Rana Mukherjee, learned counsel for the respondents. G

Learned counsel for the respective parties took us through the pleadings, annexures and the orders passed by the courts below and other relevant records. H

A Ms. Kamini Jaiswal, learned counsel for the appellant, made the following submissions:-

- B (1) that the appellant being the divorced wife continues to enjoy the status akin to that of licensee under her husband in respect of tenancy of her husband pursuant to the provisions of Sections 3 and 18 of the Hindu Adoptions and Maintenance Act, 1956;
- C (2) that by precluding the appellant from contesting the suit, the suit would be decreed *ex parte* to the detriment of the appellant and her minor children who even after the said decree of divorce continue to have a right of residence in the suit premises and cannot be dispossessed except in accordance with law;
- D (3) that the High Court has failed to appreciate that even after the passing of a decree of divorce even though the marital status of the husband and wife is brought to an end, the divorced wife still has a right of maintenance which right includes right of residence. Consequently, the appellant had a right of her residence *vis-a-vis* her husband and consequently her stay in the rented accommodation of her husband could not be treated as illegal.

E Ms. Kamini Jaiswal, learned counsel for the appellant, invited our attention to the documents filed and, in particular, the notice dated 18.12.1989 which was issued after the decree of divorce by the landlady and also took us through the averments made in the plaint and in the written statement. In support of her contention, she cited the following decisions:-

- F 1. *Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, Orissa and Ors.*, [1964] 7 SCR 596
- F 2. *Khetrabasi Biswal v. Ajaya Kumar Baral and Ors.*, [2004] 1 SCC 317
- F 3. *Dattatreya and Ors. v. Mahaveer and Ors.*, [2004] 10 SCC 665
- F 4. *Hutchinson v. Hutchinson*, (1947) 2 All ER 792
- G 5. *Middleton v. Baldock*, (1950) 1 All ER 708
- G 6. *Old Gate Estates, Ltd. v. Alexander and Anr.*, (1949) 2 All ER 822
- H 7. *Brown v. Draper*, (1944) 1 All ER 246

Mr. Rana Mukherjee, learned counsel for the respondents, made the following submissions by way of reply:- A

- (1) the view taken by the High Court is highly justified in the facts and circumstances of the case and does not deserve any interference by this Court;
- (2) That Order 1 Rule 10(2) of the C.P.C. envisages addition of defendants only in two specified cases: B
  - (a) parties who ought to have been joined as necessary parties;
  - (b) whose presence is necessary for complete and effective adjudication of all the questions involved in the suit as proper parties; C
- (3) That the Court does not have the jurisdiction or the power to add parties who do not fall under either of these two categories.
- (4) Who are necessary parties have been made clear by the Act itself. Only notifying sub-tenants are to be made parties under Section 13(2) of the Act. Only when the tenant obtains the prior written consent of the landlord under Section 14 of the Act and both the tenant and the sub-tenant have notified under Section 16(1) that the sub-tenancy may be said to be perfected and the subtenant a notifying sub-tenant. Admittedly this is not the case of the appellant. D E

Therefore, he submitted that the appellant cannot be impleaded as a necessary party.

- (5) So far as proper party is concerned, he submitted that the law is firmly established that the intervenor has to show a direct legal interest as opposed to commercial or indirect interest in the subject matter of litigation especially in a suit relating to immoveable property. The intervenor has to show that in her absence some order is to be passed which will affect her legal right. It was submitted that the appellant not being a party to the contractual tenancy is not able to claim any right, title or interest through her divorced husband and that she has totally failed to demonstrate any legal interest which would entitle her to be impleaded as a proper party also. F G

- A (6) The appellant being neither a necessary nor a proper party, there is no machinery available at law to implead the appellant as party defendant.

In support of his contention, he relied on the following decisions:-

- B 1. *Dr. H.S. Rikhy and Ors. v. The New Delhi Municipal Committee*, [1962] 3 SCR 604
2. *Razia Begum v. Sahebzadi Anwar Begum and Ors.*, AIR (1958) SC 886
- C 3. *Kumar Jagdish Chandra Sinha and Ors. v. Eileen K. Patricia D'Rozarie (Mrs)* [1995] 1 SCC 164
4. *B.P. Achala Anand v. S. Appi Reddy and Anr.*, [2005] 3 SCC 313
5. *Bibi Zubaida Khatoon v. Nabi Hassan Saheb and Anr.*, [2004] 1 SCC 191
- D 6. *India Umbrella Manufacturing Co. and Ors. v. Bhagabandei Agarwalla and Ors.*, [2004] 3 SCC 178
7. *Vijay Lata Sharma v. Raj Pal and Anr.*, [2004] 6 SCC 762
8. *Balvant N. Viswamitra and Ors. v. Yadav Sadashiv Mule and Ors.*, [2004] 8 SCC 706.
- E 9. *Dr. A.K. Roy v. J.C. Roy Choudhury and Anr.*, AIR (1982) Calcutta 8

F We have carefully gone through the pleadings and other records and also the judgments relied on by both the parties including the provisions of law under the West Bengal Premises Tenancy Act, 1956.

Section 2(d) of the Act defines 'landlord' as follows:

G "‘landlord’ includes any person who, for the time being, is entitled to receive or but for a special contract, would be entitled to receive the rent of any premises, whether or not on his own account."

Section 2(h) of the Act defines 'tenant' as follows:

H "‘tenant’ means any person by whom or on whose account or behalf, the rent of any premises is , or but for a special contract would be, payable and includes any person continuing in possession after the

termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction." A

The only question for consideration in this appeal is whether the appellant has a right to be impleaded as party defendant. As per the appellant's own averment, the proforma respondent has divested himself of physical possession. While dissolving marriage under Section 13-B of the Hindu Marriage Act, 1955, the matrimonial court with the consent of the parties ordered the proforma respondent to pay a sum of Rs. 200 p.m. for maintenance of the minors only. The appellant, in our opinion, by such consent order has expressly waived her right to maintenance. B C

Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 reads thus:

"maintenance" includes- D

- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;
- (ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage;" E

Section 18 of the Hindu Adoptions and Maintenance Act, 1956 reads as follows:-

"18. *Maintenance of wife.*- (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime. F

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,-

- (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her; G
- (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband; H

- A (c) if he is suffering from a virulent form of leprosy;  
 (d) if he has any other wife living;  
 (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
- B (f) if he has ceased to be a Hindu by conversion to another religion;  
 (g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.”

C Section 23 of the Hindu Adoptions and Maintenance Act, 1956 reads as follows:-

D “*Amount of maintenance.*- (1) It shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the Court shall have due regard to the considerations set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.

E (2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to-

- (a) the position and status of the parties;  
 (b) the reasonable wants of the claimant;  
 (c) if the claimant is living separately, whether the claimant is justified in doing so;  
 (d) the value of the claimant’s property and any income derived from such property, or from the claimant’s own earnings or from any other source;  
 (e) the number of persons entitled to maintenance under this Act.

G (3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to-

- (a) the net value of the estate of the deceased after providing for the payment of his debts;

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- (b) the provision, if any, made under a will of the deceased in respect of the dependant; A
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased; B
- (f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other source;
- (g) the number of dependants entitled to maintenance under this Act." C

Section 25 of the Hindu Marriage Act, 1955 reads as follows:-

"25. *Permanent alimony and maintenance.*-(1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immoveable property of the respondent. D

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under subsection (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just. E

(3) If the Court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the Court may deem just." F

A perusal of Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 would clearly show that the intention of the legislature by including G

A food, clothing, residence etc. was to provide a real maintenance and not a bare or starving maintenance. The intention of the legislature is further indicative from the words "*also the reasonable expenses of*" appearing in clause (ii) of Section 3(b), clearly meaning thereby that an unmarried daughter besides the expenses of food, clothing, residence etc. is also entitled to the expenses of and incident to her marriage. The intention of the legislature becomes absolutely clear and lucid from the heading and contents of Section 23 of the Hindu Adoptions and Maintenance Act, 1956 which speaks of amount of maintenance. Therefore, it can safely be said that what is implicit under Section 3 is made explicit in Section 23. In the instant case, while dissolving the marriage under Section 13(b) of the Hindu Marriage Act, 1955, the court ordered maintenance for minors only with mutual consent.

According to Ms. Kamini Jaiswal, learned counsel for the appellant, maintenance includes residence and, therefore, the appellant is entitled to stay on in the suit premises as a licensee under her husband. The fact remains otherwise. The husband parted with legal possession and not retaining any control thereof whatsoever without complying with the statutory provisions of the Act which attract the provisions of Section 13(1)(a) of the Act. Section 13(1)(a) of the Act is attracted where the tenant without the prior written consent of the landlord transfers, assigns or sublets in whole or in part of the suit premises. The contesting respondents case in the suit in para 4 reads as follows:-

"The defendant left the suit premises by inducting some strangers outsiders sometime in the month of November, 1989. It may be mentioned that the defendant took the tenancy for residential purposes and in fact was occupying the same with the members of his family that is to say his wife and children. All of a sudden without the consent of the plaintiff the defendant inducted some strangers outsiders in the suit premises in contravention of the terms of tenancy and allowed the said stranger outsiders to occupy a portion of the suit premises along with the members of his family and the defendant himself left the same allowing the said stranger outsiders to continue in occupation of the same illegally and without any authority whatsoever."

The husband of the appellant filed written statement. Para 7 of the written statement reads as follows:-

"That with regard to the contention made in paragraph 4 of the plaint,

it is emphatically denied that any strangers and/or outsiders were ever  
 inducted in the suit premises by the defendant at any time or at all. A  
 As admitted by the plaintiff the defendant took tenancy of the suit  
 premises for the purpose of residing there with his family. It is totally  
 false to say as stated by the plaintiff that any stranger and/or outsider  
 was ever allowed to occupy a portion of the suit premises. The B  
 defendant for his own business and professional activities has to live  
 outside the suit premises keeping the members of his family viz. his  
 son and daughter in the suit premises in the care and custody of the  
 mother of the children, who has since been divorced by a decree by  
 mutual consent. The said divorced wife i.e. the mother of the children C  
 has been staying in the suit premises only as the custodian of the said  
 minor son and daughter of this defendant. The defendant as the father  
 of those minor children did never sever his connection with those  
 children. As such the defendant had no obligation to handover the  
 possession of the suit premises to the plaintiff, particularly when his  
 dearest and nearest ones i.e. the children of his own both having the D  
 right and claim of any property including this tenancy right unless  
 divested by the defendant or under any law in force. The defendant  
 has already obtained a decree of divorce on mutual consent from a  
 competent court of law. Under the said decree, the children born out  
 of the wedlock were handed over to the custody of the wife and the  
 defendant was directed to pay a sum of Rs. 200 every month to the E  
 wife for the maintenance of these minor children. The wife, by virtue  
 of the said divorce decree may not be the member of the defendant's  
 family, but the children cannot lose their right to remain in occupation  
 of the suit premises as the members of the family of this defendant.  
 This defendant, it is reiterated even at the cost of reputation never F  
 allowed his ex-wife qua ex-wife to occupy the suit premises. She is  
 therein the suit premises only as the custodian of the minor children  
 of the defendant, the monthly rents payable are being paid on account  
 and/or behalf of the defendant. In no stretch of imagination the lady  
 can be said to be in occupation of the suit premises instead of or in  
 place of the defendant. She is there only as the custodian of the minor G  
 children of the defendant who have every right to continue in  
 possession of the suit premises as members of the family of the  
 defendant. It is once again emphatically denied that the defendant did  
 ever or at all induct any stranger/outsider in the suit premises or in  
 any part thereof."

A It is thus seen from the above averment in the written statement that the husband has never allowed his wife to occupy the suit premises and that she is in possession of the suit premises only as a custodian of the minor children of the defendant and that the monthly rents payable are being paid on account and on behalf of the defendant. The husband also entered appearance in the suit and is contesting the suit by filing a written statement and, therefore, the  
 B appellant has no *locus standi* to be impleaded in the suit either as a necessary or a proper party in whose presence the suit ought to be or should be heard.

The trial Judge also in his order arrived at the following conclusion:-

- C (a) that the mere payment of money cannot create a jural relationship of landlord and tenant;
- (b) the appellant is neither a necessary nor a proper party which is in conformity with the provisions of the West Bengal Premises Tenancy Act, 1956 and the well settled principles of law governing addition of proper parties;
- D (c) that the appellant could not continue as a joint tenant after dissolution of marriage;
- (d) since the original tenant was alive and contesting the suit, the question of representing the interest of the minor son  
 E could not arise.

On these findings, the trial Judge dismissed the appellant's application for being impleaded as a party defendant.

F The High Court of Calcutta, vide its judgment which is under challenge, concurred with the findings of the trial Court and has held that the trial Court did not commit any jurisdictional error nor acted with material irregularity in dismissing the appellant's application under Order 1 Rule 10(2) C.P.C.

G We shall now refer to the decisions cited by counsel for both the parties. Though very many decisions were cited, we feel that it is not necessary to load this judgment by referring to all the citations. It is also not necessary to multiply citations in this regard.

Ms. Kamini Jaiswal, learned counsel for the appellant relied on the following judgments:-

- H 1. *Khetrabasi Biswal v. Ajaya Kumar Baral and Ors.*, [2004] 1 SCC

317. This is a case of filing of a writ petition filed by the selectees whose names were omitted by the State Government while purporting to interpret the service rules, preparing a fresh list without issuing notices to the candidates prejudiced thereby. This Court remitted the matter to the High Court for decision afresh after giving opportunity to implead all necessary parties. This case will have no application for the case on hand because the writ petition was filed in this case by the selectees whose names are omitted by the State Government. Therefore, this Court set aside the order under challenge and remit the matter to the High Court for decision on merits after giving an opportunity to the writ petitioners to implead all necessary parties in the writ petition.

2. *Dattatreya and Ors. v. Mahaveer and Ors.*, [2004] 10 SCC 665  
This case deals with non-impleadment of proper party. In this case, the material facts were not brought to the notice of the Court and the persons who were ultimately to be affected were avoided to be impleaded as parties. This Court held that it was merely not a question of non-impleadment of necessary parties technically and strictly in accordance with the provisions of the Code of Civil Procedure, rather was very much a question of proper parties being there before the Court particularly in the proceedings under Article 226 of the Constitution of India. This case has no application to the case on hand and distinguishable on facts and law.

3. *Hutchinson v. Hutchinson*, [1947] 2 All ER 792

The King's Bench Division held as under:—"The parties were married in 1924 and a son was born in 1929. In 1932 the husband bought a house in his own name, and the parties resided there as their matrimonial home until the husband left to live with another woman. The wife obtained a decree of judicial separation and the husband made payments for the support of his wife and son. The husband applied under s.17 of the Married Women's Property Act, 1882, for an order for possession of the house.

Held: the court had a discretion under s.17 which was not affected by the fact that a decree for judicial separation had been obtained, and in the circumstances it would be unjust to make an order for possession."

A 4. *Middleton v. Baldock*, [1950] 1 All ER 708

The Court of Appeal held as under:-

B “(i) where a husband had deserted his wife and the wife remained in the matrimonial home she was lawfully there and the husband remained in occupation by her; possession of a dwelling-house to which the Rent Restrictions Acts applied could only be ordered on one of the grounds specified in the Acts, and a tenant could not by agreement waive the statutory protection afforded by the Acts; and, therefore, the orders for possession were wrongly made.”

C Denning, L.J., observed as under:-

D “The reason [why the husband cannot give possession] is because the wife has a very special position in the matrimonial home. She is not the sub-tenant or licensee of the husband. It is his duty to provide a roof over her head. He is not entitled to tell her to go without seeing that she has a proper place to go to. He is not entitled to turn her out without an order of the court: see *Hutchinson v. Hutchinson* (5). Even if she stays there against his will, she is lawfully there, and, so long as she is lawfully there, the house remains within the Rent Acts and the landlord can only obtain possession if the conditions laid down by the Acts are satisfied.”

E 5. *Old Gate Estates, Ltd. v. Alexander and Anr.*, [1949] 2 All ER 822

The Court of Appeal held as under:-

F “A statutory tenant living with his wife in a flat which constituted the matrimonial home left the premises following a quarrel with his wife, and purported to surrender them to the landlords by agreement. His wife remained in occupation with the use of his furniture. On the wife’s refusing to quit the premises, the husband gave her written notice revoking any authority which she might have from him to occupy the flat. In proceedings by the landlords against the tenant and his wife for possession,

G Held: the tenant had not given up possession, as he remained in occupation through his wife and furniture, and, accordingly, his statutory tenancy had not been terminated.”

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6. *Hochtief Gammon vs. Industrial Tribunal, Bhubaneshwar, Orissa and Ors.*, [1964] 7 SCR 596 A

The matter arises under the Industrial Disputes Act and, therefore, the judgment is not adverted to.

All the above judgments, in our opinion, will not be of any assistance to the case on hand and all the judgments are distinguishable on facts and on law. B

Mr. Rana Mukherjee, learned counsel for the respondents relied on the following judgments:-

1. *Dr. H.S. Rikhy and Ors. v. The New Delhi Municipal Committee*, [1962] 3 SCR 604 C

This case was cited for the proposition that mere payment of rent creates no *jural relationship*.

2. *Razia Begum v. Sahebzadi Anwar Begum and Ors.*, AIR (1958) SC 886 This case was cited for the proposition of law that the question of addition of parties under Order 1 Rule 10 of C.P.C. is generally not one of initial jurisdiction of the court but of the judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case. D E

3. *Dr. A.K. Roy v. J.C. Roy Choudhury and Anr.*, AIR (1982) Calcutta 8 In this case, the High Court held as under:

“Where the application under O.1, R.10 was filed by the wife of real tenant to be added as a defendant to the suit for ejection in absence of her husband and her father-in-law, the ostensible tenant was the benamidar of the real tenant, the wife could be impleaded as a party to the suit for the ends of justice as the rules relating to the joinder of parties are based on the principles of avoiding multiplicity of suits and also preventing possible conflict of decisions.” F

This is a case prior to the coming into force of the Benami Transactions Prohibition Act, 1988. It was held that in the case of alleged Benami, the real tenant who had not entered appearance in the suit and was not contesting the same could be represented by his wife. In this case, matrimonial suit was pending. At page 9 of para 9, it has been stated that in the absence of the real H

A owner, the wife can represent his interest till the marriage is dissolved by a decree of divorce. In our view, both the courts below were just and right to ignore this decision as it instead of holding the appellant comes to the direct aid of the contesting respondent.

B 4. *Bibi Zubaida Khatoon v. Nabi Hassan Saheb and Anr.*, [2004] 1 SCC 191

C This case deals with the case of transfer *pendente lite* without leave of the Court. This Court held such a transferee cannot as of right seek impleadment in the suit though normally joinder based on transfer *pendente lite* is permitted to enable the transferee to protect his interest. This Court held the application under Order 1 Rule 10 was rightly rejected.

D 5. *Vijay Lata Sharma v. Raj Pal and Anr.*, [2004] 6 SCC 762, In this case, it was alleged that on the death of the original owner the appellant became the owner of the property. The respondent-tenant, in his written statement, has stated that the property was not let out to him in his individual capacity but to his firm and that the rent was paid to the appellant on behalf of the firm. At this stage, a third party made an application for impleadment as a party respondent alleging that the original owner had executed a Will bequeathing the property to the temple. This Court held that the party seeking impleadment on the basis of Will was neither a necessary nor proper party to the release proceedings. This Court also held that the question of title could not be decided by the prescribed authority under the Act.

E 6. *Balvant N. Viswamitra and Ors. v. Yadav Sadashiv Mule and Ors.*, [2004] 8 SCC 706.

F In this case, this Court held that a sub-tenant in a suit for possession by landlord against tenant is merely a proper party and not a necessary party and, therefore, it was not necessary for the plaintiffs to join the respondents as defendants. This Court held as follows:

G “A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.”

H A very recent judgment of this Court in *B.P. Achala Anand v. S. Appi Reddy and Anr.*, [2005] 3 SCC 313 was strongly relied on by counsel for

both sides. This Court considered the right of deserted wife to stay in the tenancy premises. This Court also considered the right of the deserted wife to contest the eviction suit. Both the parties relied on paras 32-35 of the said judgment. They are reproduced hereunder: A

32. In our opinion, a deserted wife who has been or is entitled to be in occupation of the matrimonial home is entitled to contest the suit for eviction filed against her husband in his capacity as tenant subject to satisfying two conditions: first, that the tenant has given up the contest or is not interested in contesting the suit and such giving up by the tenant-husband shall prejudice the deserted wife who is residing in the premises; and secondly, the scope and ambit of the contest or defence by the wife would not be on a footing higher or larger than that of the tenant himself. In other words, such a wife would be entitled to raise all such pleas and claim trial thereon, as would have been available to the tenant himself and no more. So long as by availing the benefit of the provisions of the Transfer of Property Act and rent control legislation, the tenant would have been entitled to stay in the tenancy premises, the wife too can continue to stay exercising her right to residence as a part of right to maintenance subject to compliance with all such obligations including the payment of rent to which the tenant is subject. This right comes to an end with the wife losing her status as wife consequent upon decree of divorce and the right to occupy the house as part of right to maintenance coming to an end. B  
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33. We are also of the opinion that a deserted wife in occupation of the tenanted premises cannot be placed in a position worse than that of a sub-tenant contesting a claim for eviction on the ground of sub-letting. Having been deserted by the tenant-husband, she cannot be deprived of the roof over her head where the tenant has conveniently left her to face the peril of eviction attributable to default or neglect of himself. We are inclined to hold - and we do so - that a deserted wife continuing in occupation of the premises obtained on lease by her husband, and which was their matrimonial home, occupies a position akin to that of an heir of the tenant-husband if the right to residence of such wife has not come to an end. The tenant having lost interest in protecting his tenancy rights as available to him under the law, the same right would devolve upon and inhere in the wife so long as she continues in occupation of the premises. Her rights and F  
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A obligations shall not be higher or larger than those of the tenant himself. A suitable amendment in the legislation is called for to that effect. And, so long as that is not done, we, responding to the demands of social and gender justice, need to mould the relief and do complete justice by exercising our jurisdiction under Article 142 of the Constitution. We hasten to add that the purpose of our holding as above is to give the wife's right to residence a meaningful efficacy as dictated by the needs of the times; we do not intend nor do we propose the landlord's right to eviction against his tenant be subordinated to the wife's right to residence enforceable against her husband. Let both the rights coexist so long as they can.

C 34. We have dealt with all the abovesaid aspects of the law as it was urged on behalf of the landlord, Respondent 1 that Smt Achala, the appellant has no right to contest or defend herself in these proceedings nor a right to file and prosecute this appeal as there is no *privity* of contract between the appellant and landlord and the appellant is neither a tenant nor so recognised ever by Respondent 1 landlord. We cannot agree. We feel that the appellant was rightly - in the facts and circumstances of the case - permitted by the High Court to be joined as a party to the proceedings. She was also rightly allowed to contest the suit and deposit the rent in the court for payment to the landlord for and on behalf of the tenant-husband.

E 35. So far as a deserted wife, whose status as wife has not come to an end by a decree of divorce or by decree for annulment of marriage, is concerned, we have made the position of law clear as above. However, the case of a divorced wife stands on a little different footing. Divorce is termination of matrimonial relationship and brings to an end the status of wife as such. *Whether or not she has the right of residence in the matrimonial home, would depend on the terms and conditions in which the decree of divorce has been granted and provision for maintenance (including residence) has been made.* In the event of the provision for residence of a divorced wife having been made by the husband in the matrimonial home situated in the tenanted premises, such divorced wife too would be entitled to defend, in the eviction proceedings, the tenancy rights and rights of occupation thereunder in the same manner in which the tenant-husband could have done and certainly not higher or larger than that. She would be liable to be evicted in the same manner in which her husband as

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tenant would have been liable to be evicted.”

The case on hand is a case of divorced wife. It is true that divorced wife is also a wife. We have already dealt with the case of the appellant and her right to contest or defend herself in the pending eviction proceedings. We have already held that she has no right to contest or defend herself nor a right to file and prosecute the eviction proceedings. There is no *privity* of contract between the appellant and the landlady. The tenancy is in favour of the appellant's husband. The Family Court has granted a decree for divorce on payment of certain sum by way of maintenance. As a matter of fact, the appellant's husband, the tenant is contesting the Rent Control proceedings and has filed a written statement denying the claim of the landlady. It was argued by Ms. Kamini Jaiswal on behalf of the appellant that the appellant was recognised by the landlady as a sub-tenant. In support of the said submission, she placed reliance on the letter written by the landlady to the appellant on 18.12.1989. This letter, in our opinion, will be of any aid or assistance to the appellant. It has been stated in that letter that the appellant has been paying the rent on behalf of one Duttas and occupying the said accommodation. The appellant was requested to get a confirmation in writing that he has no interest in the ground floor accommodation of the house in question and surrender the possession of the same to the landlady so that the agreement could be entered into with the appellant on fresh terms if the appellant proposed to continue to stay there. The letter was concluded by saying that until these formalities are completed the occupation of the ground floor accommodation by the appellant is unauthorised and illegal.

We, therefore, cannot agree with the submission of learned counsel for the appellant that the landlady has so recognized the appellant as sub-tenant. In para 35 above, this Court deals with the case of a divorced wife. We have already extracted para 35.

For the foregoing discussion, we are of the opinion that the Court has no jurisdictional power to add a person as a party who is neither a necessary party nor a proper party. The appellant in the status of divorcee cannot claim interest in the suit premises either independently or through her erstwhile husband and as such she cannot be held to say that she is a party without whose presence the court cannot adjudicate and pass the decree. She is, therefore, not a necessary party. The appellant is also not a person whose presence is necessary to enable the Court effectually and completely to adjudicate all the questions involved with the suit.

**A** In view of the discussion made above, we find merit and substance in the submission made by counsel for the respondents. We are of the opinion that the trial Court and the High Court did not commit any jurisdictional error nor acted with material irregularity in dismissing the application under Order 1 Rule 10 C.P.C. filed by the appellant.

**B** The impugned orders, therefore, does not call for any interference. The present appeal is dismissed without any order as to costs.

**B.B.B.**

**Appeal dismissed**