

By: **TASADDUQ HUSSAIN BALOCH,**
Advocate, High Court
Visiting Lecturer Law College,
University of Sargodha.

QUESTION:

What is striking out and adding parties under CPC? Please illustrate.

ANSWER:

PARTIES:

Parties are persons whose names appear on the record of the suit as plaintiff or defendant, though they may have been introduced as parties at any stage. Only a natural or juristic person can be a party to a suit and suit cannot be brought by or against assumed names. Any number of persons can be joined together as co-plaintiffs provided it is in accordance with law, and any objection to their joinder must be taken at the earliest possible opportunity, failing which it shall be deemed to have been waived. A suit should not be dismissed on account of joinder or non joinder, but the court should allow amendment by the addition or transposition of parties.

The parties can either be classified as a necessary party or a proper party. A person who ought to have been joined, is a necessary party, and a person whose presence is necessary to effectually and completely adjudicate upon and settle all points involved in the suit, is a proper party. Parties cannot be added in any other case.

NECESSARY PARTIES:

Persons who ought to have been joined as parties and in whose absence no effective decree can be passed are necessary parties. 1994 SCMR 2268. Where a necessary party is not impleaded, the decree is not binding on it. PLD 1997 SC Aj&K 28. A person against whom no relief is asked for is not a necessary party but may be a property party. A suit cannot proceed in the absence of a necessary party. It is the duty of the court to decide this matter as soon as it is raised and to implead the necessary party even if there is no application in this behalf.

PROPER PARTIES:

Persons whose presence before the court is necessary to enable it effectually and completely adjudicate upon and settle all questions involved in the suit, are proper parties. A suit in which a proper party is not impleaded is not bad. The term 'question involved in the suit' refers to questions between the parties to the suit, and will also include all matters material to a proper decision of the case, which may even be raised by third parties. Such persons need not be persons who seek any relief or against whom any relief is sought.

COURT MAY STRIKE OUT OR ADD PARTIES:

Order 1 Rule 10(2) provides that a court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been 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, be added.

ADD PARTIES:

A court is empowered to bring on record only necessary or proper parties, and once a suit has been instituted, parties can be added only with the leave of the court.

The power of adding parties is not a question of initial jurisdiction, but of judicial discretion which has to be exercised in view of all the circumstances of the

case, 1996 SCMR 781. The court may order the addition of a person as a necessary or proper party suo moto, but ordinarily a party should be added upon an application by such person or by a party to the suit. A person cannot be added as a plaintiff without his own consent and without the consent of the original plaintiff. In such a case the person may be added as a defendant. It is not necessary to give notice before impleading a person as a defendant. However, a defendant can be added without the consent of the original plaintiff or of the person sought to be so added, but a plaintiff's wishes must be given consideration. However, persons cannot be added as parties to add a new cause of action which does not concern the plaintiff at all, nor should parties be added to alter the character of the suit, nor should the court add a person or a party if he has no present interest in the subject matter of the suit.

AT ANY STAGE:

Parties can be added or struck out by the court where the matter is pending at any stage during this pendency. 1980 CLC 1375. Parties can be added before the decree is drawn up, but not after the drawing up of the final decree. PLD 1964 Dacca 1106. Likewise, parties cannot be added consequent to the filing of an appeal. Parties can be added even after the passage of a preliminary decree. However, once an appeal is pending, even an appellate court can add parties. This can be done even in an appeal before the Supreme Court. Impleading of a party at any stage means impleading it for all stages of the suit. Thereafter the suit can be remanded for trial. The appellate court can in the alternative remand the case, directing the lower court to add the party. Parties can be added by the subordinate court suo moto after remand. In any case a court always has inherent powers to add parties. The addition can be on an application or even suo-moto. But no person can be joined as a party if the claim against him is barred by time. A court can add as parties the representatives of a person against whom the suit has abated, or the suit has become barred by limitation, for giving effect to the rights of the parties. When parties are added by an appellate or revisional Court, it is sufficient also for the purposes of the suit. However, where the trial court's order refusing to add a party is upheld in version, the appellate court subsequently cannot implead such a person as a party. There is no element of review involved in adding, transposing or striking out parties.

STRIKING OUR PARTIES:

Parties who have no connection whatsoever with the relief sought, may be struck off the record as parties. PLD 1972 SC 59. The court can also strike out parties over whom it had no jurisdiction or where it has no jurisdiction over the properties claimed. AIR 1961 Patna 364. Whether a party is to be struck out or not is to be determined on the basis of the plaint as framed and where after the trial the court is of the view that the claim by or against such party is not substantiated it should dismiss the claim and not strike off the name of such party. The name of a defendant who died prior to the institution of the suit should be struck off. Where the name of any person is struck off as a party, such person merely ceases to be a party to the suit, and the suit against him cannot be taken to have been dismissed. The case comes to an end in so far as such a person is concerned. The suit against a person whose name is struck off shall be deemed to have been withdrawn, and unless the court specifies otherwise in the order striking out such party, a fresh suit against such person based on the same cause of action will be barred: Even an appellate court can strike out parties.

TRANSPOSITION OF PARTIES:

The power to transpose parties is included in the power to add and strike out parties, and is also inherent in a court. PLD 1992 SC 590. Transposition can be ordered on application made orally or in writing or even suo moto. Transposition should be allowed where it is necessary for a complete adjudication upon the questions involved in the suit and to avoid multiplicity of proceedings. For example, in a suit for partnership accounts, if the plaintiff should want to withdraw, the court can transpose any other defendant partner as a plaintiff and continue the suit, and transpose the original plaintiff to the position of a defendant. Were this not permissible, any other defendant desirous of obtaining rendition of accounts would have had to institute a new suit. A defendant may be transposed as a plaintiff on his application, and allowed relief even if not asked for. But the court should not order transposition if it changes the character of the suit, or when the claim or defence of the party sought to be transposed runs completely counter to that set up by the party on the other side.

MISDESCRIPTION OF PARTIES:

The misdescription of parties can be corrected by the court at any time, and for this purpose the nature of the allegations in the plaint and the relief sought should be looked into. A judicial functionary should not be impleaded in his personal name but by designation. The suit should not be dismissed on this account. No question of limitation arises in correcting misdescription. The above principles apply to miscellaneous applications also. However, where a suit is instituted by or against a dead person, the suit is a nullity and the pleading cannot be allowed to be amended, but where prior to the institution, one of the several plaintiffs or defendants had died, the suit continues and the court may add the legal representative as parties, subject to the law of limitation.

ADDING PLAINTIFF:

No person can be added or transposed a plaintiff or as a next friend of a person under disability without his consent, and without an order of the court. Such a person can be added as a defendant. When a person is added as a party in his capacity as a legal representative of a deceased party, no question of limitation is involved.

AMENDING PLAINT:

The court should only allow such amendments as are necessitated by the addition or striking out of parties. It cannot permit amendments which will add to or alter the nature of the suit. If the amendment is not made, the court should reject the plaint.

LIMITATION:

Where a new plaintiff or defendant is added or substituted, the suit shall be deemed to have been instituted so far as such a person is concerned when such a person is made a party. This rule will also apply where the court makes the order suo moto. Proceedings against such person shall be deemed to have begun only upon the service of summons.

There is a distinction between adding and substituting a party). Where a person is made a party on application, such addition must be deemed to have

been effected from the date of the application and not from the date of the order on the application. Where the order is made suo-moto, the person shall be deemed to have been made a party on the day the order is made.

As a consequence of the above, if a necessary party is added after the expiry of the period of limitation, the suit shall ultimately be dismissed, on the ground that the suit becomes a properly constituted suit only when such person is made a party and by this time the suit is already time barred, unless the omission is caused as a result of mistake of court. No question of limitation arises when a guardian of a minor party is appointed after expiry of limitation. Where the party added is only a proper party and not a necessary party, the suit will not be time barred. Addition of a party is ordinarily not a case decided and is as such not revisable.
