

overhaul of the important provisions and terms of various Revenue Laws and Rules which has to be appreciated. In other words, the above judgment has provided complete solace and relief to many persons, who were unable to resist the much frequent invocation of summary proceedings by the Government, on the pretext of erroneous RSR and TSLR entries. Finally the Government is now directed to file Civil Suits for recovery of properties if they have title to it. In fact the above judgment have

done substantial justice to a larger extent of society and litigant public.

Needless to say, the above judgment will always be a guiding principle and sort of motivation and inspiration to all the law students, lawyers, Revenue officials, Judges and also to the common man. May God bless the Honourable Justice *C.V.N. Reddy* with good health so that we can expect similar judgments on other important aspects, which would ultimately help in espousing the public cause and justice.

**DOES ORDER 1 RULE 13 OF CPC APPLIES EVEN IF OBJECTION
REGARDING NON-JOINDER OF NECESSARY PARTY IS NOT TAKEN
BEFORE SETTLEMENT OF ISSUES?**

By

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1. Order 1, Rule 13 reads “All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived”.

Section 99 of C.P.C. reads “No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder (or non-joinder) of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

Provided that nothing in this section shall apply to non-joinder of a necessary party.”

Order 1 Rule 9 reads “No suit shall be defeated by reason of the 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.

Provided that nothing in this rule shall apply to non-joinder of a necessary party”.

2. The words “or non-joinder” in the main Section of 99 and Proviso to that section were inserted by Section 34 of C.P.C. Amendment Act, 1976 which came into effect from 1.2.1977.

Proviso to Order 1, Rule 9 was also inserted by Section 52 of C.P.C. Amendment Act, 1976, which came into effect from 1.2.1977.

3. But, similar proviso to the effect that “nothing in this rule shall apply to non-joinder of a necessary party” is not inserted in Order 1 Rule 13 of C.P.C.

4. So, what is the effect of those provisos inserted to Section 99 and Order 1 Rule 9 of C.P.C. on Order 1 Rule 13 of C.P.C? There appears to be a contradiction between Order 1 Rule 13 on one side and Section 99 and Order 1 Rule 9 on the other.

5. I opine that the Parliament overlooked Order 1 Rule 13 and failed to insert a similar proviso added to Section 99 and Order 1 Rule 9 of C.P.C. to Order 1 Rule 13 also.

6. The High Court of Assam in a decision reported in AIR 1953 Ass. 193 (FB), the High Court of Calcutta in a decision reported in AIR 1969 Cal. 360 (Para 6) and our High Court in a decision reported in

1989 (3) ALT 28 (NRC) held that Order 1 Rule 13 has no application to a case where a necessary party to the suit is not before the Court, even in the absence of a proviso similar to one under Order 1 Rule 9.

7. So, my humble opinion is that we have to read Order 1 Rule 13 also with a similar proviso in view of the provisos inserted to Section 99 and Order 1 Rule 9 of CPC.

APPOINTMENT OF HIGH COURT JUDGES AND TRANSFER-PRIMACY IN THE MATTER OF APPOINTMENTS BY CHIEF JUSTICE OF INDIA

By

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Article 217 Constitution of India prescribes the qualifications and conditions for appointment of Judges for High Courts, Article 217. The appointment is made under Warrant signed by the President of India in consultation with Chief Justice of Supreme Court and Governor of the State and Chief Justice of High Court concerned.

The opinion of Chief Justice of India for the purposes of Article 214(2) and Article 217(1) Constitution of India has primacy in the matter of appointments. No appointment shall be made by the President of India under these provisions to the Supreme Court or High Court unless it is in conformity with the final opinion of Chief Justice of India formed in the manner indicated. The nine Judges Bench of Supreme Court has observed in *Supreme Court Advocates on Record Association v. Union of India*, AIR 1994 SC 268 at P.436.

The recommendation made by Chief Justice of Supreme Court in the matter of appointment of Judges is binding on the Executive is firmly established and has to be read in Article 214(2) and Article 217(1) Constitution of India. AIR 1994 SC 268 (Paragraphs 388, 389, 390, 391).

The Judiciary is separate and Executive has no concern with day-to-day functioning

of Judiciary. The farmers of Constitution have placed limitations on the power of Executive in the matter of appointment of Judges of Supreme Court and High Courts. AIR 1994 SC 268 (Paragraphs 396, 400, 402).

The Nine Judges Bench of Supreme Court in AIR 1994 SC 268 in Paragraphs 221, 223 has held that the State in the present day has become major litigant and the superior Courts particularly the Supreme Court have become centers for turbulent controversies some of which with a flavour of political repercussions. In such circumstances, the Government, being the major litigant is justified in enjoying absolute authority in appointing/nominating its arbitrators. The answer would be in negative. If such process is allowed to continue, the independence of Judiciary, in long term will sink without any trace.

The “prior consultation” with superior Judiciary is a logical consequence of having an “independent Judiciary” as a basic feature of Constitution. If the Executive is to ignore the advice of Chief Justice of India in the process of consultation, the very object of providing consultation with Judiciary is defeated. The Executive, is therefore, bound to accept the recommendation of Chief Justice of India. There cannot be independent