

## BETWEEN THE LIVING AND THE LAWSUIT RE-EVALUATING THE PROCEDURAL AUTONOMY OF TRANSFEREES UNDER ORDER 22 RULE 10 OF THE CIVIL PROCEDURE CODE

**AUTHOR** – BHUVANESHWARI R\*, DR. K JAMEELA\*\* & FATMA AL ZAHRA\*\*

\* PHD SCHOLAR AT SCHOOL OF LAW, HINDUSTAN INSTITUTE OF TECHNOLOGY AND SCIENCE

\*\* ASST. PROF (SG), SCHOOL OF LAW HINDUSTAN INSTITUTE OF TECHNOLOGY AND SCIENCE

\*\*\* STUDENT AT TAMIL NADU DR. AMBEDKAR LAW UNIVERSITY

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### Abstract

Order 22 Rule 10 of the Civil Procedure Code, 1908 allows for the continuation of a suit by or against a person upon whom an interest in the suit has devolved during its pendency. Unlike other provisions under Order 22 that deal with death-based substitution, Rule 10 governs cases of devolution by assignment, transfer, or operation of law. The provision's discretionary phrasing—requiring the transferee to obtain leave of the court—has led to interpretive ambiguity and procedural uncertainty, especially in contemporary litigation involving frequent property transfers, contractual assignments, and commercial debt transfers.

This paper critically examines the evolving judicial approach to Rule 10, with a particular focus on whether the leave of the court is mandatory, the status of transferees pendente lite, and the consequences of non-impleadment. Drawing on key decisions of the Supreme Court and High Courts, the analysis situates Rule 10 within the broader procedural framework, including its interplay with Order 1 Rule 10 and Section 146 CPC. The paper also explores the practical implications of these rules in property, contract, and commercial disputes, where procedural clarity is essential to ensure substantive justice. Finally, the paper considers whether legislative refinement is warranted to align the provision with the realities of modern litigation.

### I. Introduction

The Transferee's Procedural Predicament The Indian civil justice system is predicated on the principle of finality, seeking to resolve disputes comprehensively between the parties arrayed before the court. However, the protracted nature of litigation often means that the subject matter of a suit, be it tangible property or an intangible right, does not remain static. During the pendency of a lawsuit (pendente lite), interests are frequently transferred, assigned, or devolved upon third parties who were not part of the original dispute. This act of acquiring a

legitimate interest in property or a right that is currently under judicial scrutiny immediately places the transferee in a state of profound legal vulnerability. Their newly acquired interest is now inextricably linked to the outcome of a lawsuit in which they are a stranger, with no inherent right to be heard and no control over its conduct. This creates a fundamental tension between the finality of judicial proceedings and the principles of natural justice, which demand that no person be condemned unheard, especially when their proprietary or contractual rights are at stake.

At the heart of this procedural conundrum lies Order 22 Rule 10 of the Code of Civil Procedure, 1908 (CPC). This provision serves as the primary statutory gateway for a transferee pendente lite to enter the litigation and protect their interest. It provides that in cases of an "assignment, creation or devolution of any interest" during the pendency of a suit, the suit may, "by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved." Unlike other rules in Order 22 that mandate substitution upon a party's death, Rule 10 is designed as a catch-all provision to ensure that litigation can proceed to an effective adjudication despite a change in the ownership of the interest in dispute.<sup>1040</sup>

This paper argues that while Order 22 Rule 10<sup>1041</sup> is designed to ensure the continuation of suits, its discretionary nature—encapsulated in the pivotal phrase "by leave of the Court"—creates a "zone of procedural uncertainty." This uncertainty subordinates the transferee's substantive rights to the vagaries of judicial discretion and the strategic, sometimes collusive, conduct of the original litigants. The transferee's ability to participate is not a right but a privilege, granted or denied based on a court's case-by-case assessment. This paper critically analyzes the evolution of this judicial discretion, its practical consequences in modern litigation involving complex property and commercial transactions, and argues for a legislative recalibration to enhance the procedural autonomy of transferees.

To develop this thesis, this paper will first trace the doctrinal foundations of the rule, examining its legislative origins, intent, and the legal meaning of its operative terms. It will then delve into the judicial interpretation of the court's discretionary power, identifying the factors that guide its exercise. The analysis will subsequently situate Order 22 Rule 10 within its broader procedural ecosystem, exploring its symbiotic

relationship with Order 1 Rule 10 CPC, Section 146 CPC, and the substantive doctrine of lis pendens. Through case studies in property, commercial, and corporate law, the paper will illustrate the rule's application and its contemporary challenges. Finally, a critical appraisal of the current framework will be undertaken, leading to specific recommendations for legislative reform aimed at fostering greater certainty and fairness for those who find themselves caught between a concluded transaction and an ongoing lawsuit.<sup>1042</sup>

## II. Doctrinal Foundations - Origin, Nature, and Scope of the Rule

To comprehend the contemporary challenges surrounding Order 22 Rule 10, it is imperative to first understand its doctrinal underpinnings. The rule's origin, the legal meaning of its key terms, and its distinction from other provisions within the same Order provide the essential context for its interpretation and application.<sup>1043</sup>

### A. Legislative Genesis and Intent

The procedural framework governing the consequences of a change in a party's status during litigation is not a modern invention but has deep roots in English common law. The provisions of Order 22 of the CPC were largely derived from the English Common Law Procedure Act and related Rules of Court, which were designed to prevent suits from abating or being frustrated by events such as the death, marriage, or insolvency of a party, or the assignment of their interest in the suit's subject matter. The primary legislative anxiety was to avoid the premature termination of a suit on purely technical grounds, thereby ensuring that substantive rights could be effectively adjudicated.

This principle was carried into the Indian legal system during the colonial era. The evolution of the CPC, from the first uniform Code of 1859

<sup>1040</sup> *An Introduction to the Indian Civil Procedure Code*, MELIORA LEGAL CENTER (May 29, 2023), <https://www.mplegalfirm.in/2023/05/an-introduction-to-indian-civil.html> (last visited Aug. 1, 2025).

<sup>1041</sup> Code of Civil Procedure, 1908, Order 22, Rule 10.

<sup>1042</sup> *Amit Kumar Shaw v. Farida Khatoon*, A.I.R. 2005 S.C. 2209.

<sup>1043</sup> *Assignment and Delegation*, LEXPULG, <https://www.lexplug.com/topics/contracts/assignment-delegation> (last visited Aug. 5, 2025).

through its subsequent revisions in 1877 and 1882 to the present Code of 1908, demonstrates a consistent legislative intent to create mechanisms for the continuation of suits. The core objective was to allow the litigation to proceed by or against the person who had effectively "stepped into the shoes" of the original party, ensuring that the judicial process remained tethered to the individual or entity currently holding the relevant legal interest. Rule 10, in particular, was crafted as a residuary and enabling provision to cover all situations of interest transfer not specifically addressed by the rules concerning death or insolvency, thereby preventing a procedural vacuum.

### **B. The Scope of 'Devolution': Meaning, Definitions, and Distinctions**

The applicability of Order 22 Rule 10 hinges on the occurrence of an "assignment, creation or devolution of any interest." A precise understanding of these terms is crucial to defining the rule's scope. "Assignment" is a legal term of art, primarily rooted in contract and property law, signifying the transfer of rights, property, or other benefits from one party (the assignor) to another (the assignee). In the context of the CPC, an assignment could involve the sale of a property under litigation, the transfer of a debt that is the subject of a recovery suit, or the assignment of rights under a commercial contract being contested in court.<sup>1044</sup>

The phrase "creation or devolution of any interest" is broader and encompasses assignment. "Devolution" refers to the passing of an interest from one person to another by operation of law, rather than by a voluntary act of the parties. This ensures that the rule applies to a wide array of scenarios beyond a simple sale or transfer. It includes succession to an office (such as a new trustee or the head of a religious institution), inheritance where a party was suing in a representative capacity, or the

vesting of assets in a new entity following a corporate merger. This jurisprudential elasticity has proven to be a significant strength of the rule. The term "devolution," as envisioned by the drafters of the 1908 Code, has been adeptly interpreted by the judiciary to encompass complex modern commercial transactions that were unimaginable at the time of its enactment. For instance, in cases involving corporate mergers, courts have held that the cessation of the transferor company's existence and the vesting of its assets and liabilities in the transferee company constitutes a "devolution of interest" under Rule 10. This interpretation prevents the automatic abatement of suits involving a merged entity, demonstrating the rule's capacity to adapt to the evolving landscape of corporate and commercial law without necessitating frequent legislative intervention.<sup>1045</sup>

A critical aspect of understanding Rule 10 is distinguishing it from Rules 3 and 4 of Order 22. Rules 3 and 4 provide for the mandatory substitution of legal representatives within a prescribed time limit upon the death of a plaintiff or defendant, respectively, failing which the suit abates. These rules apply where the right to sue survives the deceased in their personal capacity. In contrast, Rule 10 is a general, discretionary provision for all other cases of devolution. The Supreme Court, in the landmark case of

Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass (Deceased) Through His Chela, clarified this distinction decisively. The Court held that when a suit is brought by or against a person in a representative capacity (e.g., as the head of a religious institution or math), and that person dies, the interest of the representative devolves upon their successor. This scenario is governed by the discretionary framework of Rule 10, not the mandatory abatement provisions of Rules 3 or 4. This is because the devolution pertains to

<sup>1044</sup> Banerjee, Devanjali, *A brief about provisions related to death, marriage and insolvency of parties*, IPLEADERS BLOG (Sept. 30, 2023), <https://blog.ipleaders.in/a-brief-about-provisions-related-to-death-marriage-and-insolvency-of-parties/> (last visited Aug. 6, 2025).

<sup>1045</sup> Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd., (2013) 5 S.C.C. 397.

the office or representative character, not the personal rights of the deceased individual.

### III. The Fulcrum of Power: Judicial Interpretation of "Leave of the Court"

The procedural fate of a transferee pendente lite rests on the phrase "by leave of the Court." This clause transforms the transferee's participation from an automatic right into a judicial concession. The interpretation of this discretionary power by the courts has shaped the contours of a transferee's procedural autonomy, establishing a framework where judicial gatekeeping is the norm.

A. A Matter of Discretion, Not Right The judiciary has consistently and unequivocally held that a person who acquires an interest in the subject matter of a suit during its pendency cannot demand to be impleaded as a matter of right. The power vested in the court under Order 22 Rule 10 is purely discretionary. The Supreme Court has affirmed this principle in numerous landmark judgments. For instance, it has been held that there is no absolute rule that a transferee<sup>1046</sup>

pendente lite must be allowed to join the proceedings in all cases.

This discretion extends to situations where the transfer itself may be questionable. In *Surjit Singh v. Harbans Singh*, where a transfer was made in violation of a court's interim injunction, the Supreme Court rejected the transferees' application for impleadment under Rule 10, holding that a person who purchases property in defiance of a court order cannot be rewarded with participation in the suit. Similarly, in *Raj Kumar v. Sardari Lal*, the Court observed that exercising discretion to not grant leave is appropriate in cases of alienation made in contravention of a court's restraining order. These decisions underscore that the court's leave is an equitable remedy, and a party with "unclean hands" may be denied this procedural concession. The impleadment is not an automatic consequence of the transfer but is

contingent upon a judicial assessment of the facts and circumstances of each case.

### B. The Balancing Act

Factors Guiding Judicial Discretion While the power is discretionary, it is not arbitrary. It must be exercised judicially, based on sound legal principles. Over time, the courts have articulated several factors that guide this balancing act, weighing the transferee's interest against the orderly progression of the suit.

Nature of the Suit and Extent of Interest Transferred: A primary consideration is whether the transferor has divested themselves of their entire interest in the subject matter. The Supreme Court, in *Amit Kumar Shaw v. Farida Khatoon*, elaborated on this point, observing that where a defendant transfers their entire interest, they may no longer have a stake in properly defending the suit and could even collude with the plaintiff. In such circumstances, the court would ordinarily be inclined to join the transferee as a party to enable them to protect their interests and ensure a fair and complete adjudication.<sup>1047</sup>

Bona Fides of the Applicant and Delay: The court scrutinizes the conduct of the applicant to ensure the application is not a mala fide attempt to delay or obstruct the proceedings. While an application under Rule 10 can be made at any stage of the suit, including during an appeal, an inordinate and unexplained delay in seeking impleadment may weigh against the applicant.

Prejudice to Original Parties: The court must balance the transferee's need to protect their newly acquired interest against the potential prejudice to the original parties, particularly the plaintiff. The addition of a new party can complicate the issues, prolong the trial, and increase costs. The court assesses whether granting leave would fundamentally alter the nature of the suit or unfairly burden the other litigants.

<sup>1046</sup> *Raj Kumar v. Sardari Lal*, (2004) 2 S.C.C. 601.

<sup>1047</sup> *Surjit Singh v. Harbans Singh*, (1995) 6 S.C.C. 50.

Scope of Inquiry: A crucial procedural safeguard established by the judiciary is that the court is not required to conduct a detailed or conclusive inquiry into the validity and legality of the assignment or devolution at the stage of granting leave. The court only needs to be prima facie satisfied that an interest has devolved upon the applicant. The ultimate question of the transfer's validity can be decided at the final trial of the suit. This summary approach prevents the application under Rule 10 from becoming a "mini-trial" that would derail the main proceedings.

In essence, the court's discretion under Order 22 Rule 10 is a tool for case management, aimed at ensuring that the litigation remains focused on the real parties in interest without being unduly complicated or delayed by subsequent events.<sup>1048</sup>

#### IV. The Procedural Ecosystem

Interplay with Other Legal Provisions Order 22 Rule 10 does not operate in isolation. It is part of a complex procedural and substantive legal framework that collectively governs the rights and liabilities of transferees pendente lite. Its application is deeply intertwined with other provisions of the CPC and the Transfer of Property Act, 1882. Understanding these interconnections is essential to appreciating the full legal context in which a transferee's procedural autonomy is determined.

##### A. The General and the Specific

Order 1 Rule 10 and Order 22 Rule 10 Courts frequently consider applications for impleadment by transferees under both Order 22 Rule 10 and Order 1 Rule 10(2) of the CPC. Order 1 Rule 10(2) grants the court a broad, general power to add any party whose presence is deemed "necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit". Order 22 Rule 10, in contrast, is the specific provision dealing with the continuation of suits

after a pendente lite devolution of interest. The Supreme Court has observed that the scope of these two provisions is "similar" and that the principles applicable to one can often be applied to the other. This judicial approach provides flexibility, allowing a court to implead a transferee either under the specific provision governing their situation or under its general power to ensure a complete adjudication. However, this conflation can also create analytical ambiguity. The test under Order 1 Rule 10(2) is whether a party is "necessary" or "proper," focusing on the effective resolution of the dispute between the original parties. The test under Order 22 Rule 10 is whether there has been a prima facie devolution of interest, focusing on the right of the successor-in-interest to continue the proceedings. While often leading to the same result, the conceptual underpinnings are distinct.<sup>1049</sup>

##### B. The Substantive Anchor

Section 52 of the Transfer of Property Act, 1882 The procedural mechanism of Order 22 Rule 10 is fundamentally anchored in the substantive doctrine of lis pendens, which is codified in Section 52 of the Transfer of Property Act, 1882 (TPA). This doctrine stipulates that during the pendency of any suit in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit so as to affect the rights of any other party thereto under any decree which may be made therein.

The effect of lis pendens is not to invalidate the transfer but to make it subservient to the rights of the parties as finally determined by the court. This means that a transferee pendente lite is bound by the final decree in the suit, regardless of whether they were ever made a party to the proceedings. This substantive rule is what makes the procedural remedy of Order 22 Rule 10 so critical. The law first binds the transferee to the outcome of the litigation and then provides

<sup>1048</sup> Order 22 - Death, marriage and insolvency or parties, LATESTLAWS, <https://www.latestlaws.com/section/334/2714/order-22-death-marriage-and-insolvency-or-parties/> (last visited Aug. 2, 2025).

<sup>1049</sup> Law Commission of India, Twenty-Seventh Report on the Code of Civil Procedure, 1908 (1964).

a procedural pathway, albeit a discretionary one, for them to be heard. This relationship reveals a deeper symbiosis: the substantive law of lis pendens is a powerful tool to prevent defendants from frustrating a suit by alienating the subject matter, but it simultaneously creates a potential injustice for a bona fide purchaser. Order 22 Rule 10 emerges as the procedural solution to this substantive dilemma, offering a mechanism to mitigate the harshness of Section 52 by allowing the transferee a chance to defend their acquired interest. The debate over the discretionary nature of Rule 10 is, therefore, not merely a procedural one; it is a debate about the fundamental fairness of the lis pendens doctrine in practice.

### C. The Enabling Power

Section 146 of the CPC serves as a general enabling provision that complements Order 22 Rule 10. It states that, save as otherwise provided by the Code, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him. The Supreme Court has interpreted this section to mean that an assignee or a person who has acquired an interest from a party to the suit can maintain proceedings in their own right. This provision provides a parallel statutory basis for a transferee to seek continuation of the suit, and applications are often filed invoking both Order 22 Rule 10 and Section 146, reinforcing the legal foundation for the transferee's claim to participate.<sup>1050</sup>

### V. Application in Modern Litigation

Case Studies and Contemporary Challenges  
The principles governing Order 22 Rule 10 are not mere academic constructs; they have profound practical implications across various domains of civil litigation. The dynamic nature of modern commerce and property transactions means that the devolution of

interest during a suit is a common occurrence, making the application of this rule a frequent point of contention.

### A. Property and Real Estate Disputes

The most classic application of Order 22 Rule 10 arises in disputes concerning immovable property. A person who purchases a property pendente lite steps into a precarious situation. Under the doctrine of lis pendens, they are bound by the decree passed against their vendor. However, their ability to defend their title depends entirely on the court granting them leave to be impleaded. This creates a significant strategic dilemma. If leave is denied, the purchaser's multi-crore investment is left at the mercy of their vendor's litigation strategy. The vendor, having already received the sale consideration, may have little incentive to vigorously defend the suit. As the Supreme Court noted in

Amit Kumar Shaw, the vendor may conduct a negligent defense or even collude with the plaintiff, leading to an adverse decree that extinguishes the purchaser's title without them ever having a say in the matter. This risk is particularly acute in partition suits or suits for specific performance, where third-party interests are frequently created during the long pendency of the litigation.

### B. Commercial and Contractual Litigation

In the commercial sphere, the assignment of contractual rights is a routine business practice. A company may assign its book debts to a financial institution, a partner may transfer their interest in a firm, or the rights under a construction contract may be assigned to a new contractor. When the underlying contract or debt is the subject of litigation, Order 22 Rule 10 becomes the essential tool to ensure the suit continues with the real party in interest. For example, if a bank sues a debtor, and during the suit, the bank assigns this debt to an asset reconstruction company (ARC), the ARC can apply under Rule 10 to be substituted as the plaintiff and continue the recovery proceedings.

<sup>1050</sup> Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass (Deceased) Through His Chela, (1976) 1 S.C.C. 103.

This ensures that the litigation follows the commercial interest, preventing the original plaintiff (the bank), which no longer has a stake, from having to continue the suit, and allowing the assignee (the ARC) to directly pursue its claim.

### C. Corporate Restructuring and Insolvency

The adaptability of Order 22 Rule 10 is most evident in its application to complex corporate scenarios, which were not contemplated by its original drafters.

### D. Mergers and Amalgamations

Corporate restructuring often involves the merger of one company (the transferor) into another (the transferee), with the transferor company ceasing to exist as a legal entity. This event, often termed "corporate death," raises a critical procedural question: what happens to the pending lawsuits filed by or against the now-defunct company? The Delhi High Court, in *Bank Kreiss Ag v. Ashok K. Chauhan* (a decision later affirmed in *Yapi Kredi Bank*), provided a definitive answer. The court reasoned that a merger is not equivalent to the death of a natural person, which would trigger the abatement provisions of Order 22 Rules 3 or 4. Instead, it is a "devolution of interest" by operation of law, where all assets, liabilities, and legal proceedings of the transferor company devolve upon the transferee company. Therefore, the correct procedure is for the transferee company to apply under Order 22 Rule 10 for leave to continue the suit. This interpretation is crucial for legal certainty in the corporate sector, ensuring that pending litigation survives corporate restructuring and can be continued by the successor entity.

### E. Insolvency Proceedings

When a plaintiff in a suit is declared insolvent, their property, including actionable claims, vests in an Official Assignee or Receiver. Order 22 Rule 8 specifically provides that the insolvency of a plaintiff shall not cause a suit to abate if the assignee or receiver elects to continue it for the benefit of the creditors. While

Rule 8 is the specific provision, the underlying principle is one of devolution of interest. The suit can be continued by the receiver, who now represents the interests of the creditors, ensuring that valuable claims are not extinguished due to a party's financial collapse. This mechanism is vital for maximizing the assets available for distribution to creditors in insolvency and bankruptcy proceedings.

### VI. A Critical Appraisal: Procedural Autonomy vs. Judicial Gatekeeping

While Order 22 Rule 10 serves the essential function of allowing suits to continue despite a change in interest, its reliance on unstructured judicial discretion creates significant challenges. The current framework establishes a system of judicial gatekeeping that often conflicts with the procedural autonomy required for transferees to adequately protect their substantive rights, leading to a series of paradoxes and perils.

#### A. The Autonomy Paradox

The legal framework presents a paradox for the transferee pendente lite. Substantively, upon transfer, they become the real owner of the interest in dispute. However, procedurally, their autonomy is severely curtailed. They cannot act to protect this interest as of right but must first persuade a court to grant them leave to do so. This discretion is exercised on a case-by-case basis, often without clear, predictable guidelines, leading to inconsistent outcomes across different courts and benches. This uncertainty is particularly problematic in high-stakes commercial transactions, where legal risk must be assessed and mitigated. A party acquiring a business or a portfolio of debts may find that its ability to enforce those rights in ongoing litigation is subject to a procedural lottery, undermining the very certainty that commercial law seeks to provide.<sup>1051</sup>

<sup>1051</sup> Khemchand Shankar Choudhari v. Vishnu Hari Patil, (1983) 1 S.C.C. 18.

### B. The Peril of Non-Impleadment

The consequences for a transferee who is denied leave, or who fails to apply, are severe. The Supreme Court has repeatedly clarified that a transferee pendente lite is bound by the final decree, irrespective of their participation in the suit. This exposes the transferee to several grave risks:

**Negligent or Collusive Conduct:** The original party (the transferor), having divested their interest, may no longer be motivated to defend the suit vigorously. They may fail to present crucial evidence, miss court dates, or even actively collude with the opposing party to secure a decree that is detrimental to the transferee but beneficial to them (e.g., in exchange for an under-the-table settlement).

**Inability to Appeal:** A person who is not a party to the suit has no automatic right of appeal. A transferee bound by an adverse decree must first seek separate leave to appeal from the appellate court. This, too, is a discretionary remedy, and the transferee must prove they are a "person aggrieved" by the decree. This adds another layer of procedural uncertainty, forcing the transferee to fight for a standing to appeal a decision they were never allowed to influence at the trial stage.<sup>1052</sup>

**Finality of the Decree:** The decree passed in the suit will operate as *res judicata*, preventing the transferee from re-litigating the same issues in a subsequent suit. They are thus left with a binding decision but without having had their day in court.

The Supreme Court's stark observation in *Raj Kumar v. Sardari Lal* that a transferee who does not take recourse to Order 22 Rule 10 remains bound by the suit's result and must suffer the consequences of an adverse decree highlights the high-stakes nature of this procedural step.

### C. Reconciling with Dominus Litis

The discretionary nature of Rule 10 is often justified by invoking the principle of *dominus*

*litis*, which translates to "master of the suit." This doctrine posits that the plaintiff, having initiated the litigation, has the right to choose whom to sue and cannot be compelled to add parties against their will. While this principle is fundamental to the adversarial system, its application in the context of *pendente lite* transfers requires nuance.

When a defendant transfers their entire interest in the subject matter of the suit, the very foundation of the *dominus litis* principle is weakened. The original defendant is no longer the true party in interest; they are merely a placeholder on the record. The real dispute is now between the plaintiff and the transferee. In such a scenario, rigidly adhering to the plaintiff's prerogative to choose the defendant would be to prioritize procedural formalism over substantive reality. The judiciary has recognized this tension. In cases like *Amit Kumar Shaw*, the Supreme Court has signaled that where the transferor's interest is completely extinguished, the transferee's claim for impleadment should be viewed more favorably to prevent a sham defense. This suggests that the principle of *dominus litis* must yield to the need for an effective adjudication when the original "master" of the defense has abandoned the field.<sup>1053</sup>

### VII. Conclusion and Recommendations for Legislative Refinement

The analysis of Order 22 Rule 10 of the Code of Civil Procedure, 1908, reveals it to be a procedural provision of immense practical importance, yet one fraught with inherent tensions. It stands as a critical bridge between the static nature of a lawsuit's original composition and the dynamic reality of property and commercial transactions. While the rule successfully prevents the abatement of suits upon the devolution of interest, its effectiveness is significantly hampered by the unstructured and unpredictable nature of the judicial discretion it confers. The current

<sup>1052</sup> *Bank Kreiss Ag v. Ashok K. Chauhan*, (2007) I.L.R. 2 Delhi 1017.

<sup>1053</sup> *Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.*, (2012) 8 S.C.C. 384.

framework creates a precarious legal position for transferees pendente lite, whose substantive rights are often held in abeyance, subject to a procedural grant of leave that is neither guaranteed nor governed by clear, uniform standards. This uncertainty undermines the stability required for modern commerce and property law, where the ability to protect acquired interests must be predictable.

The core issue is not the existence of discretion itself, which provides necessary flexibility for courts to manage complex litigation and prevent abuse of process. Rather, the problem lies in its unstructured application, which leans too heavily against the procedural autonomy of the transferee. The risks of non-impleadment—being bound by a decree resulting from a negligent or collusive defense without any right to be heard or appeal—are too severe to be left entirely to the vagaries of case-by-case judicial determination. A recalibration is necessary to better balance the plaintiff's right as dominus litis with the transferee's fundamental right to protect their vested interest. To this end, the following legislative refinements are proposed:

**Amendment to Order 22 Rule 10 to Introduce a Rebuttable Presumption:** It is recommended that sub-rule (1) of Rule 10 be amended, or a proviso be added, to create a rebuttable presumption in favour of granting leave to a transferee pendente lite. This presumption would be particularly strong in cases where the applicant can demonstrate, on a prima facie basis, that the entire interest of an original party has devolved upon them. Such an amendment would shift the onus onto the party opposing the impleadment to demonstrate that granting leave would cause undue prejudice, significantly delay the proceedings, or would be an abuse of the court's process. This would transform the transferee's position from that of a mere supplicant to that of a party with a presumptive right to be heard, subject to equitable considerations.

**Insertion of Guiding Principles to Structure Discretion:** To promote consistency and predictability in the exercise of judicial discretion, it is proposed that a new

sub-rule be inserted into Rule 10. This sub-rule would explicitly codify the factors that courts shall consider when deciding an application for leave. These factors, drawn from existing jurisprudence, should include: (a) the bona fides of the applicant; (b) the stage of the proceedings and any potential for delay; (c) the extent of the interest transferred and whether the transferor retains any subsisting interest; (d) the potential for prejudice to the existing parties; and (e) the risk of collusion or a non-*efficacious* defense by the original party. Codifying these principles would structure judicial discretion without eliminating it, ensuring that decisions are based on a consistent set of relevant criteria.

**Enhancing Notification Duties under Order 22 Rule 10-A:** Order 22 Rule 10-A currently imposes a duty on a pleader to communicate the death of a party to the court. This principle should be expanded. A legislative amendment could be introduced to place a mandatory duty on any party to a suit who assigns or transfers their interest pendente lite, and on their pleader, to formally notify the court and all other parties of such devolution within a specified timeframe. This would prevent transfers from occurring covertly, which currently leaves the plaintiff and the court unaware of the change in the real party in interest. Such a notification would trigger a formal consideration of the transferee's status and compel the parties to address the issue of impleadment proactively, rather than leaving it to the chance discovery by the transferee. By implementing these reforms, the legislature can bring greater clarity, fairness, and predictability to the application of Order 22 Rule 10, ensuring that it remains a robust and equitable mechanism for resolving disputes in an ever-evolving legal and commercial landscape.

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| 15 | <i>Yapi Kredi Bank (Deutschland) AG v. Ashok K. Chauhan</i>                  | 2013 SCC OnLine Del 143 |

| S. No. | Case Name   | Citation                |
|--------|---|-------------------------|
| 1      | <i>Ajmera Housing Corporation v. Amrit M. Patel (Dead) Through L.Rs. &amp; Ors.</i> | (1998) 6 SCC 500        |
| 2      | <i>Amit Kumar Shaw v. Farida Khatoon</i>  | AIR 2005 SC 2209        |
| 3      | <i>Anil Kumar Singh v. Shivnath Mishra</i>  | (1995) 3 SCC 147        |
| 4      | <i>Bank Kreiss AG v. Ashok K. Chauhan</i>   | (2007) ILR 2 Delhi 1017 |
| 5      | <i>Dhurandhar Prasad Singh v. Jai Prakash University</i>                            | AIR 2001 SC 2552        |
| 6      | <i>Ghantesher Ghosh v. Madan Mohan Ghosh</i>  | (1996) 11 SCC 446       |
| 7      | <i>Khemchand Shankar Choudhari v. Vishnu Hari Patil</i>                             | (1983) 1 SCC 18         |
| 8      | <i>P.M.A.R.M. Muthiah Chettiar v. Lodd Govinda Doss Krishna Doss Varu</i>           | AIR 1921 Mad 303        |
| 9      | <i>Raj Kumar v. Sardari Lal</i>   | (2004) 2 SCC 601        |
| 10     | <i>Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass (Deceased) Through His Chela</i>   | (1976) 1 SCC 103        |