

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.1663 OF 2015

Sumati Bhoja Kuckaen and ors. : Petitioners
versus
Gretta D'Souza and ors. : Respondents.

**Mr. S S Kherat with Ms. Najatiya Shroff i/by Mr. P M Havnur for the
Petitioners.**
Mr. N J D'Monte for the Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 02nd February 2015

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 28/11/2014 passed by the learned Judge, City Civil Court, Greater Mumbai, by which order the Chamber Summons No.2355 of 2014 filed in S C Suit No.7676 of 2000 came to be allowed and the Plaintiff was allowed to amend the plaint in terms of the Schedule to the said Chamber Summons.

2 By the amendments, the Plaintiff sought the impleadment of the Brihanmumbai Mahanagarpalika as Defendant No.17 and the Assistant Municipal Commissioner of the Brihanmumbai Managarpalik as Defendant No.18. The Plaintiff has also sought incorporation of Paragraph 9A which relates to the Brihanmumbai Mahanagarpalika (for brevity sake hereinafter referred to as "the BMC"), as also prayer clause (c-1) which is also the relief

sought against the BMC. The suit in question has been filed by the Plaintiff who claims to be one of the Co-owners of the suit properties for a declaration that the Defendant Nos.1 to 5 are the trespassers and for a further declaration that the structure "Boundary Villa" with toilet constructed by the Defendant No.1 as shown in red colour on the plan Exhibits A and B to the Plaint is illegal and unauthorized and that the same be demolished and removed by the Defendant No.1 and/or the Defendant Nos.2 to 5. In the plaint, the averments relating to how the Plaintiff conceives the said construction to be unauthorized finds a place. It is averred by the Plaintiff that the said structure is put up by the Defendant No.1 without the permission of the BMC.

3 It seems that the suit was initially filed in this Court and thereafter on the pecuniary jurisdiction of the City Civil Court, Greater Mumbai being enhanced came to be transferred to the City Civil Court, Greater Mumbai. In the suit the issues were framed and the affidavit of evidence on behalf of the Plaintiff has also been filed. It is at the said stage that the instant Chamber Summons has been filed which principally is for arraying the BMC and its officer as parties to the suit. The reasons mentioned in the affidavit in support of the said Chamber Summons was that through inadvertence the BMC was not joined as party Defendant to the suit.

4 The said Chamber Summons was opposed to on behalf of the

Petitioner herein by filing affidavit in reply.

5 The Trial Court considered the said Chamber Summons and has by the impugned order allowed the same. The Trial Court whilst considering the said Chamber Summons has referred to the judgment of the Apex Court reported in AIR 2009 SC 1433 in the matter of Vidyabai vs. Padmalatha and the judgment reported in 2012 AIR SCW 1035 in the matter of J. Samuel and ors. vs. Gattu Mahesh and ors., and the judgment of a learned Single Judge of the Madras High Court reported in 2014 AIR CC 768 (MAD) in the matter of G V Ramesh and another vs. P Munusamy, and has distinguished the said judgments on the basis of the facts involved in the present case and the reasons mentioned by the Plaintiff in the present Application for seeking amendment at this length of time. The Trial Court was of the view that having regard to the fact that for a complete and final adjudication of the dispute, the BMC is required to be joined as party Defendant has allowed the said Chamber Summons.

6 As indicated above in the plaint the averments relating to the unauthorized construction allegedly carried out by the Defendant No.1 find place. It is also mentioned that the said construction has been carried out by the Defendant No.1 without the permission of the BMC. However, though the said averments were made, the BMC and its officer were not joined as parties

to the suit in question. The Plaintiff has therefore by the instant Chamber Summons has sought to join the BMC and its officer as parties Defendants to the proceedings and also to bring on record the Notice dated 2/8/1988 issued by the BMC which is amongst the documents which the Plaintiff wants to bring on record and which documents according to the Plaintiff have become recently available.

7 In my view, having regard to the reasons mentioned by the Trial Court for allowing the instant Chamber summons No.2355 of 2014, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]