

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

CIVIL APPLICATION NO.1022/2015
IN
FIRST APPEAL NO.1981/2008

Smt. Sugandha Suresh Sarode

... Applicant

Vs.

Shripad Sharad Bhandekar & Ors.

... Respondents

Mr. S. S. Kanetkar for the Applicant

Mr. Shripad S. Bhandekar Respondent No.1 in person.

CORAM : K. K. TATED, J.

DATE : JULY 10, 2015

PC.:

1. Heard the learned counsel for the Applicant and Respondent No.1 in person.
2. This Application is preferred by the Plaintiff for allowing them to proceed with the present First Appeal against Ramkunj Smriti CHS - Defendant No.3.
3. The learned counsel for the Applicant Plaintiff submits that initially the Plaintiff filed L.C.Suit No.2440/2006 against the Respondent. During pendency of the suit, the Respondent Defendant No.1 filed affidavit dated 07/03/2008 stating that they have no objection if the suit is decreed in favour of the Applicant. He relies on paragraph 8 of the said affidavit which reads thus:

“8. I say that, in view of the facts stated herein and order passed by Hon'ble High Court of Judicature at Bombay, by this present affidavit, I tender my written consent to decree the present suit in favour of Plaintiffs taking into consideration the consent by way of an affidavit of tenant Shri Sharad Najogi Bhandekar and letter dated 06/01/2006 of landlord the Defendant no.2 herein.”

4. The learned counsel for the Applicant submits that in view of the affidavit dated 07/03/2008 filed by Respondent No.1 before the Trial Court, the Applicant Plaintiff filed Application below Exhibit 17 dated 25/08/2008 for deleting Defendant No.2 and 3 from the cause title of the plaint. That Application was allowed and they deleted both the Defendants. He submits that thereafter the Respondent No.1 - Defendant No.1 refused to act on the basis of his affidavit dated 07/03/2008. He submits that the Plaintiff filed Application Exhibit-17 on 21/08/2008 and thereafter immediately, the Trial Court proceeded with the matter and passed decree dated 20/08/2008. He submits that in view of the subsequent development, now it is necessary for the Applicant to proceed with the present proceedings against original Defendant No.3 i.e. Ramkunj Smriti CHS. He submits that at the time of filing the present appeal, they made Defendant No.3 as Respondent in the cause title. He further submits that this Hon'ble Court be pleased to allow the Applicant to proceed with the First Appeal against Respondent No.3 Ramkunj Smriti CHS.

5. On the other hand, the Respondent party in person vehemently opposed the Civil Application. He submits that the Applicant, on their own filed Application dated 25/08/2008 below Exhibit- 17 in the Trial

Court for deleting the name of Defendant No.2 and 3. He submits that on the basis of the said Application, the Trial Court deleted the names of Defendant Nos.2 and 3 from the cause title of the suit itself. Hence, there is no question of allowing the present Civil Application.

6. Heard both sides at length. It is to be noted that in the present proceedings the Respondent No.1 filed their affidavit dated 07/03/2008 stating that they have no objection if the suit is decreed in favour of the Applicant Plaintiff. On the basis of the said affidavit, the Applicant Plaintiff filed their Application Exhibit-17 dated 25/08/2008 for permitting them to delete the names of Defendant Nos.2 and 3. Thereafter, the Respondent No.1 - Defendant No.1 declined to act as per his affidavit dated 07/03/2008. Considering these facts and since the suit premises i.e. flat is situated in the Ramkunj Smriti CHS i.e. Respondent No.3, if any order is passed in the First Appeal, then the society has to make appropriate changes in the records of the society about the suit flat. Hence, the Respondent No.3 is necessary party in the present proceedings.

7. Considering these facts, I am of the opinion that the Applicant has made out a case for allowing them to proceed with the First Appeal against Respondent No.3 also. Hence, the following order is passed:

a. Civil Application allowed in terms of prayer clauses (a) and (b) which read thus:

(a) The delay if any in filing the present Application may kindly be condoned.

(b) The Applicant be permitted to implead the Respondent No.3 and be further permitted to prosecute the First Appeal against the Respondent No.3.

b. The Applicant to carry out appropriate amendment in cause title of the present appeal within 4 weeks from today and serve Respondent No.3, by way of private notice either by RPAD and/or by hand delivery and to file an Affidavit of service to that effect on or before next date.

c. Civil application stands disposed off accordingly. No order as to costs.

d. Office is directed to place the Civil Application No.369/2015 and 5198/2008 on board on 14/08/2015.

JUDGE