

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4459 OF 2014**

Rajkumar Singh

..Petitioner

Vs.

Makrand Babaji Pandit & Ors

..Respondents

Mr. P. R. Thatte for the Petitioner

Mr. Dinesh Shah for the Respondent No.3

**CORAM : R. M. SAVANT, J.
DATE : 27th OCTOBER, 2015**

P.C.

1 The order dated 20-3-2014 passed by the Learned Judge of the City Civil Court, Dindoshi, Mumbai, is taken exception to by way of the above Petition. By the said order, the Chamber Summons No.948 of 2012 filed by the Respondent No.3 herein came to be allowed and the Respondent No.2 was thereby directed to be impleaded as a party Defendant to the Suit.

2 The Suit in question was originally filed in this Court which bore High Court Suit No.1154 of 2012. On the pecuniary jurisdiction of the City Civil Court being enhanced, the Suit was transferred to the City Civil Court and bears S. C. Suit NO.132 of 2013, on its transfer to the City Civil Court. The said

Suit is filed under Section 6 of the Special Relief Act by the Petitioner i.e. the original Plaintiff. The gravamen of the allegation is that the Plaintiff has been dispossessed on 10-12-2011 by the Defendant No.2. It appears that the Defendant No.2 has created a right in favour of the Respondent No.2 herein allegedly on 10-5-2012. The Trial Court in view of the fact that some right has been created and that the Respondent No.3 herein i.e. the Applicant before it was in occupation of the suit premises, came to a conclusion that it would be just and proper to implead the Respondent No.3 herein i.e. the Applicant before the City Civil Court as a party Defendant to the Suit. The Trial Court was of the view that though the issue of title cannot be gone into a Section 6 Suit, as the defining aspect is only prior possession. The Trial Court nevertheless felt that for an effectual adjudication of the Suit, the presence of the Respondent No.3 herein would be necessary and accordingly allowed the application.

3 In my view, having regard to the fact that in a Section 6 suit the issue of title is not necessary to be gone into and the only defining aspect is a factum of possession and since the Respondent No.3 herein claims to be in a possession, the order passed by the Trial Court cannot be faulted with as the impleadment of the Respondent No.3 herein in the Suit as a Defendant, would undoubtedly result in a complete and effectual adjudication of the Suit. However it is clarified that the impleadment of the Respondent No.3 herein in

the Suit cannot be construed as any opinion on merits as regards the title which the Respondent No.3 claims to the suit premises.

4 With the aforesaid observations, the Writ Petition is disposed of.

[R.M.SAVANT, J]