

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5522 OF 2015

Pramod Jamnadas Gokani ... Petitioner
Vs.
Bombay Housing & Area Developing Authority & ors. ... Respondents

WITH
WRIT PETITION NO.5523 OF 2015

Kamlesh Jayant Acharya ... Petitioner
Vs.
Bombay Housing & Area Developing Authority & ors. ... Respondents

WITH
WRIT PETITION NO.5524 OF 2015

Priti Pramod Gokani ... Petitioner
Vs.
Bombay Housing & Area Developing Authority & ors. ... Respondents

WITH
WRIT PETITION NO.5525 OF 2015

Upendra Lallubhai Shah ... Petitioner
Vs.
Bombay Housing & Area Developing Authority & ors. ... Respondents

Mr. R. S. Tripathi i/b. Mr. Sudhakar G. Lakhani for Petitioner in all the
Petitions.

CORAM : R. G. KETKAR, J.
DATE : 3RD JULY, 2015

P.C. :

Heard Mr. Tripathi, learned Counsel for petitioner in all the
Petitions at length. By these Petitions under Article 227 of the
Constitution of India, original plaintiff has challenged the judgments and
orders dated 10.03.2015 passed by the learned Judge, Bombay City
Civil Court, Mumbai in Chamber Summons taken out by the third party

applicant in the Suits instituted by the plaintiff. By these orders, the learned trial Judge allowed the Chamber Summons taken out by the third party - Global Oricon Developers for directing the plaintiff to join it as party defendant to the Suit and to amend the plaint as per the Schedule annexed to the Chamber Summons. As common questions of law and fact are arising in these Petitions, in order to appreciate the controversy, facts from Writ Petition No.5522 of 2015 are considered.

2. In support of these Petitions, Mr. Tripathi submitted that plaintiff is a member and shareholder of Rajawadi Co-operative Housing Society Limited. He is in use, occupation and enjoyment of tenement No.184, Building No.B-11, situate at Rajawadi Co-operative Housing Society Limited, Chittaranjan Nagar, Rajawadi, Ghatkopar (East), Mumbai 400 077. Defendant No.1 - Bombay Housing and Area Development Authority had allotted a tit-bit plot adjacent to tenement No.184, B-11 admeasuring about 31.16 sq.mtrs. more particularly described in the plan annexed to the plaint to the plaintiff on the basis of his application dated 19.10.1996. He submitted that the allotment letter was issued by defendant No.1 on 11.07.1997. The said letter contained terms and conditions. One of the conditions was that the tit-bit area will be held by the plaintiff along with the tenements and not separately. In case of transfer of tenement, the tit-bit area will automatically stand transferred. He submitted that defendant No.2 - Pramod Co-operative Housing Society Limited had instituted Suit No.6165 of 1996 against defendant No.1 - Maharashtra Housing and Area Development (MHADA), defendant No.2 – Rajawadi Co-operative Housing Society Limited and defendant No.3 – D. J. Bhagtani, since deceased through his legal representatives for declaration that it is entitled to enforcement of statutory obligations on the part of the defendant No.1 in respect of CTS No.1004 and for mandatory injunction directing the defendant No.1 to

protect and safeguard CTS No.1004 and for perpetual injunction.

3. In paragraph 3, plaintiff therein contended that as per the original scheme and layout plan of the year 1950, entire area of CTS No.1004 was to be allotted to 48 tenement holders. CTS No.1269 was allotted to defendant No.2 – Rajawadi Co-operative Housing Society Limited. He submitted that in paragraph 4, plaintiff contended that as per the agreement of November, 1971, the plaintiff is entitled to the following tit-bit plots of CTS No.1004-

- (a) tit-bit plots facing to building Nos.C-1, C-2 & C-3.
- (b) one tit-bit plot behind C-5.
- (c) tit-bit of plot which is covered by Nallah underneath land of CTS No.1004 which is beyond the Nallah.

4. By judgment and decree dated 21.07.2009, the Suit instituted by defendant No.2 was dismissed. The said decree is not challenged by defendant No.2.

5. Mr. Tripathi submitted that the third party M/s. Global Orion Developers took out Chamber Summons No.1573 of 2014 for impleading it as party defendant to the above Suit. Niraj Chandulal Gupta filed affidavit dated 18.06.2014 in support of the Chamber Summons. In paragraph 6, it is contended that the Development Agreement dated 14.12.2009 also covers the tit-bit plots and suit plot which vests with defendant No.2 society. Plaintiff has filed reply opposing that Chamber Summons and in paragraph 9, it is specifically denied that the Development Agreement covers the tit-bit plot and suit plot with the defendant No.2 society as alleged.

6. Mr. Tripathi submitted that by the impugned order, the learned trial Judge has allowed the Chamber Summons without considering the

submissions advanced on behalf of the parties. He further submitted that the third party is neither a necessary party nor a proper party. In support of this submission, he relied upon the decision of this Court in the case of *Adarsh Water Parks & Resorts Pvt. Ltd. Vs. Abdul Rashid Abdul Rehman Yusuf*, **2014 (1) ALL MR 189**. In short, sum and substance of submission of Mr. Tripathi is that the tit-bit plot allotted to the plaintiff is not part and parcel of CTS No.1004 in respect of which the Development Agreement was entered into by and between the third party and the defendant No.2. He, therefore, submitted that the third party applicant is neither a necessary party nor a proper party.

7. I have considered the submissions advanced by Mr. Tripathi. I have also perused the material on record. As noted earlier, third party has taken out Chamber Summons for impleading it as third defendant. In paragraph 4 of the affidavit in support, it is asserted that the suit plot falls under CTS No.1004 (part), which is allotted to defendant No.2 Society by MHADA under diverse Deeds and Assignments. There are 5 buildings standing on the same land bearing CTS No.1004 (part) consisting of 48 tenements. The allottees of the said 48 tenements have formed defendant No.2 society. Defendant No.2 was desirous of redeveloping the property by demolishing the existing buildings as they were in dilapidated conditions. For that purpose, defendant No.2 entered into Development Agreement with the third party applicant on 14.12.2009. In paragraph 6, it is stated that the Development Agreement also covers the tit-bit plots and the suit plot, which vest with the society.

8. Plaintiff replied this affidavit. In paragraph 7, plaintiff denied that the suit plot falls under CTS No.1004 (part) is allotted to defendant No.2 society by MHADA by under Deed and Assignment as alleged. It was admitted that there are 5 buildings consisting of 48 tenements. In

paragraph 9, the allegations that the Development Agreement covers the tit-bit plot and suit plot with the society as alleged were denied.

9. In view thereof, the question whether the suit plot falls under CTS No.1004 (part) is a matter, which cannot be decided at the time of deciding the Chamber Summons. In my opinion, it is a matter of evidence and the parties will have to lead evidence in support of their respective contentions. While deciding the Chamber Summons, the trial Court cannot go into this question. The said question will have to be decided on the basis of the evidence that might be adduced by the parties during the trial.

10. Mr. Tripathi relied upon the decision of this Court in **Adarsh Water Parks & Resorts Pvt. Ltd.** (*supra*). That decision was considered by the learned trial Judge in paragraph 14. It was observed that the said authority is not applicable to the facts of the present case. In the case of **Adarsh Water Parks & Resorts Pvt. Ltd.** (*supra*), the Suit was instituted for specific performance. The third party applicants sought impleadment on the basis of agreement between them and the third parties, which were not even the parties to the Suit . It was also entered into much after the agreement which was the subject matter of the Suit for specific performance. It was in that context, this Court held that presence of applicants in this Suit is not required for effective adjudication of dispute between plaintiff and defendant. In the present case, third party applicant has asserted that the suit plot falls in CTS No.1004 (part). Defendant No.2 had entered into Development Agreement with the party applicant. In view thereof, it cannot be said that third applicant is not a necessary party.

11. In view of the above discussion, I do not find that the impugned

orders suffer from any error. Hence, Petitions fail and the same are dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) C.P.C.

(R. G. KETKAR, J.)

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