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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6471 OF 2015

Sarosh Merwan Poonawalla ... Petitioner

Vs.

Mr.Hoshang Merwan Poonawalla and others ... Respondents

Mr.Amol P. Mhatre, Advocate for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : 14th JULY, 2015

P.C. :

. Heard Mr.Amol P. Mhatre, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 17/04/2015 passed by the learned Judge, City Civil Court, Bombay in Chamber Summons No.1029 of 2014 in Suit No. 1386 of 2010. By that order, the learned trial Judge allowed the Chamber Summons taken out by respondent No.3 herein and directed the petitioner-plaintiff to join him as a defendant.

3. In support of this Petition, Mr.Mhatre submitted that petitioner had instituted Suit against respondents No.1 & 2 restraining them from illegally evicting the petitioner from the suit premises. The Suit was instituted in the year 2010 and immediately,

plaintiff took out application for injunction. After hearing the petitioner and respondents No.1 & 2, the learned trial Judge issued injunction. He submitted that plaintiff took out Chamber Summons No. 310 of 2010 for amending his plaint. By order dated 10/08/2011, Chamber Summons was allowed. He submitted that petitioner amended the plaint and sought relief of partition of the suit premises which are tenanted. It is at that stage, respondent No.3 took out Chamber Summons in March 2014 . He submitted that in paragraph 3 of the affidavit in support of the Chamber Summons, respondent No.3 averred that he was aware of the Suit but was not aware of the prayers in the said Suit. To say the least, the said statement is incorrect. He submitted that if at all respondent No.3 was aware of the Suit, it is unbelievable that he was not aware of the prayers made in the Suit. Apart from that, Chamber Summons was allowed on 10/08/2011 and the present Chamber Summons for impleadment is taken out in March 2014 and the delay is not explained by respondent No.3. He submitted that respondent No.3 is set up by respondents No.1 & 2. He submitted that respondent No.3 is not residing in the suit premises and therefore, he is neither a necessary nor a proper party. He submitted that letter dated 09/04/2014 addressed to the plaintiff issued by Bombay Parsi Punchayet N.N. & R.N.Wadia Baugs shows that respondent No.3 is residing in Flat N-16, Nowroz Baug. In other words, he is not

residing in the suit premises.

4. I have considered the submissions advanced by Mr.Mhatre. I have also perused the material on record. Perusal of the plaint as originally instituted shows that the petitioner has claimed relief of perpetual injunction restraining defendants No. 1 & 2 from preventing free access, dispossessing the plaintiff from his open, peaceful and quiet enjoyment of all the rooms in the suit premises, among other prayers. During the pendency of the Suit, the plaintiff amended the plaint and claimed partition. Respondent No.3 took out Chamber Summons on the ground that he is brother of plaintiff and defendant No.1. He claimed that he is also residing in the suit premises and he is necessary and proper party to the Suit. In affidavit in support of Chamber Summons, undoubtedly, in paragraph 3, it was asserted by him that he was aware of the Suit but he was not aware of the prayers made in the Suit. Once defendant No.3 claims to be aware of the Suit, it is unbelievable that he is unaware of the prayers in the Suit. In paragraph 4, it is averred that he recently got knowledge that plaintiff amended the plaint and sought partition of the suit premises by metes and bounds. He claimed that he is a resident of the suit premises and it will cause severe prejudice to his rights over the suit premises. In paragraph 5, respondent No.3 – defendant No.3 also relied upon documents to prove his possession and residence in the suit premises.

5. By the impugned order, the learned trial Judge allowed the Chamber Summons. Having regard to the fact that Suit is instituted for partition among the other reliefs as also it is not disputed that respondent No.3 is brother of plaintiff and defendant No.1, in my opinion, the learned trial Judge rightly held that he is a necessary party and no effective decree can be passed if respondent No.3 is not joined as party in the Suit. In view thereof, no case is made out for invocation of Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. All the contentions of the parties on merits are expressly kept open.

(R. G. KETKAR, J.)