

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

**CIVIL APPLICATION NO. 2983 OF 2013
IN
FIRST APPEAL NO. 250 OF 2010**

Smita C. Kusurkar	... Applicant
V/s.	
Sadanand Annappa Shetty	... Appellant/Original plaintiff
And	
Mrs. Usha Bharat Shetty	... Respondent /Ori. Defendant.

**WITH
CIVIL APPLICATION NO. 32 OF 2014
IN
FIRST APPEAL NO. 250 OF 2010**

Sandeep Shaligram Mantri	... Applicant
V/s.	
Sadanand Annappa Shetty	... Appellant/Original plaintiff
And	
Mrs. Usha Bharat Shetty	... Respondent /Ori. Defendant.

Mrs. Smita C. Kusurkar applicant party in person in C.A. No. 2983 of 2013.
Mr. Sandeep Shaligram Mantri, applicant party in person in C.A. No. 32 of 2014.
Mr. M. D. Soni for the Appellant.
Mr. Ajit S. Karwande for the respondent.

**CORAM : K. K. TATED, J.
DATED : 08/07/2015.**

PC.:

. Heard Applicants party in persons and learned Counsel for the Appellant and Respondent.

2 These two Civil Applications are preferred by co-owners of suit

property i.e. shop no. 15 (Bharat Coffee House) situated in Mantri Chawl, Dr. E. Mose's Road, Lower Parel Division, G. K. Marg, Worli Naka, Mumbai – 400 018 for joining them as respondents in First Appeal no. 250 of 2010.

3 Both the applicants party-in-persons submits that being the co-owners of the suit property they are necessary party in the present proceeding. They relied on several correspondence with the Court Receiver, Bombay High Court as well as the proceeding filed by them before the Court of Small Causes at Mumbai being RAE Suit No. 1138-1819 of 2011.

4 Both the applicants party-in-persons submits that this Hon'ble be pleased to direct the Appellant to join them as party respondents in the present First Appeal.

5 On the other hand, the learned Counsel Mr. M.D. Naik on behalf of the appellant vehemently opposed the present Civil Applications. He submits that this is the third attempt made by the owners for joining them as party in the present proceeding. He submits that initially the Applicant in Civil Application no. 32 of 2014 Mr. Sandeep Mantri preferred Chamber Summons no. 04 of 2008 before the Trial Court in S.C. Suit No. 7334 of 1990 for joining him as a party defendant. That Chamber Summons was rejected by the Trial Court by order dated 24.01.2008. Again applicant Mr. Sandeep Mantri preferred Civil Application no. 856 of 2007 in Appeal from Order no. 173 of 2004 in Notice of Motion no. 2335 of 2001 in S.C. Suit no. 7334 of 1990 for joining him as defendant in the pending suit. In that application, the

applicant made following prayers:

“a) This Hon'ble Court be pleased to order and direct the Appellant in the above Appeal to implead the Applicant a party Respondent in the above Appeal.

b) This Hon'ble court be pleased to order and direct the respondent to implead Applicant in the Short Causes Suit No. 7334 of 1990 pending before the City Civil Court, Mumbai as party defendant.

c) This Hon'ble Court be pleased to direct the Court Receiver High Court, Bombay to appoint the Applicant as agent of the Court Receiver against the monthly royalty of Rs.10,000/- without prejudice to any contentions of any of the parties in the proceeding till the final disposal of the said S.C. Suit No. 7334 of 1990.

d) Interim and ad-interim relief be granted in terms of Prayer clause (a) (b) and (c) above;

e) Cost of this application be provided for.

f) Such other and further orders or directions in the interest of justice and equity be passed.”

6 The learned Counsel for the appellant submits that Civil Application no. 856 of 2007 was withdrawn by Mr. Sandeep Mantri on 03.10.2008. In spite of that, again the applicants preferred the present Civil Application for joining them as party in the First Appeal no. 250 of 2010.

7 The learned Counsel Mr. A.S. Karwande appearing on behalf of respondent also vehemently opposed the present Civil Application. He submits that the applicants are not concerned with the subject matter of the present proceeding. The dispute in the present proceeding that who can claim tenancy, is entitled to suit property, which was originally of Shyam Siddhu Shetty. Hence, there is no substance in the present both the Civil Applications and same to be dismissed.

8 I heard both the sides at length. It is to be noted that in the First Appeal no. 250 of 2010 dispute is between the legal heirs of Shyam Siddhu Shetty and whereas, the applicants claims them as owners of the suit property. Apart from this, the earlier Mr. Sandeep Mantri (Applicant party in person) filed Chamber Summons no. 04 of 2008 in Trial Court for joining him as defendant. That Chamber Summons was dismissed by the Trial Court. Thereafter, again the Applicant party in person Mr. Sandeep Mantri preferred Civil Application no. 856 of 2007 in Appeal from Order no. 173 of 2004 for same cause of action. That was withdrawn by him on 03.10.2008. Apart from this, applicants filed RAE Suit No. 1138-1819 of 2011 in the Court of Small Causes at Mumbai for decree of possession and other reliefs which are as under :

- a) *that the Defendants their agents and servants be ordered and decreed to hand over quiet, vacant and peaceful possession of the suit premises viz. Shop No.15, situate in Mantri Chawls, Dr. E. Mose's Road, Worli Naka, Mumbai-400 018; to the plaintiff herein;*
- b) *that the Defendants, their agents and servants be permanently restrained from dealing with, disposing off, alienating, transferring assigning and/or parting with the possession, or occupation of the suit premises or any part thereof or from inducting any third party therein or from creating any third party rights, claim or interest therein, or from carrying out any work of demolition, additions, alterations, constructions in the suit premises or from removing and/or mis-appropriating any part of the suit premises.*
- c) *that pending the hearing and final disposal of the suit, this Hon'ble Court may be pleased to appoint a fit and proper person as Commissioner to visit and inspect the suit premises to find out its present nature, condition and position and its use and occupation and also to take photographs and submit the same with his report to assist this Hon'ble Court to adjudicate the suit and incidental matters.*
- d) *that pending the hearing and final disposal of the suit,*

this Hon'ble Court may be pleased to issue an order of injunction restraining the defendant, their servants, agents and persons claiming through them from dealing with, disposing off, alienating, transferring, assigning and/or parting with possession, or occupation of the suit premises or any part thereof or from inducting any third party therein or from creating any third party rights, claim or interest therein, or from carrying out any work of demolition, additions, alterations, constructions, in the suit premises or from removing and/or mis-appropriating any part of the suit premises.

- e) that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to appoint a fit and proper person as Court Receiver of the Suit property under Order XL, Rule 1 of the Code of Civil Procedure, 1908 with all powers except the power to sell;*
- f) for interim and ad-interim reliefs in terms of prayer clauses (c), (d) & (e) hereinabove;*
- g) for the cost and professional fees of the suit;*
- h) for such other and further orders, directions and relief that may be just, proper and necessary in the nature and circumstances of the case.”*

9 Considering the dispute involved in the present First Appeal no. 250 of 2010 which is between the legal heirs of Shyam Siddhu Shetty, I do not find any reason to allow the applicants to join in the present First Appeal as a landlords. The landlords suit is already pending in the Court of Small Causes at Mumbai for various relief.

10 Considering these facts, both the Civil Applications stand rejected. No order as to costs.

(K.K.TATED, J.)