

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

WRIT PETITION NO.7691 OF 2014

Smt. Nirmala Arun Agarwal : Petitioner.
Versus
Smt. Manibai Kalu Mhatre and ors. : Respondents.

Mr. J M Puranik for the Petitioner.
Mr. Kedar Dighe i/by Mr. Vishal S Khanavkar for the Respondent Nos.3 and 4.

CORAM : R. M. SAVANT, J.
DATE : 08th September 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 28/07/2014 passed by the learned Joint Civil Judge, Senior Division, Kalyan by which order the Application (Exhibit 45) filed by the Respondent Nos.3 and 4 herein for their impleadment in the suit in question being Regular Civil Suit No.377 of 2013 came to be allowed and resultantly the Plaintiff i.e. the Petitioner herein was directed to implead the said Respondents as party Defendants to the said suit.

2 The suit in question has been filed by the Plaintiff questioning the notice issued by the Kalyan Dombivali Municipal Corporation under Sections 264 and 268 of the Maharashtra Municipal Corporation Act. The said notice calls upon the Petitioner to vacate the structure in question in view of the fact that the same is in dilapidated condition. In the suit it seems that the Petitioner

has filed an application for interim injunction which application came to be allowed and resultantly the notice issued by the Municipal Corporation came to be stayed. It is after acquiring the knowledge of the said injunction granted by the Trial Court, that the Respondent Nos.3 and 4 herein filed the instant Application (Exhibit 45) for their impleadment and the application was founded on the fact that the original Defendant No.3 has purchased the property being "Mani Niwas" by a conveyance deed dated 26/02/2003 from the original Defendant No.1.

3 The Trial Court having regard to the said fact of the Defendant No.3 having purchased the said property from the Defendant No.1 held that the Defendant No.3 has stepped into the shoes of the Defendant No.1 and therefore in the context of the challenge in the suit is required to be joined as party to the said suit. The Trial Court did not countenance the objection raised on behalf of the Plaintiff that the said document is not properly stamped as the Trial Court was of the view that at the said stage it is not necessary to go into the said aspect. The non-registration of the said document is sought to be justified on behalf of the Defendant Nos.3 and 4 by contending that since the structure in question is illegal, the said document could not be registered.

4 In my view, having regard to the fact that the Defendant No.3 has stepped into the shoes of the Defendant No.1 on the basis of the said

conveyance deed dated 26/02/2003, the Defendant Nos.3 and 4 if not necessary parties are proper parties to the said suit. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed order.