

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7177 OF 2013

Mr. Nihalasingh R. Singh .. Petitioner
vs.
Mr. Lalmansingh H. Singh & anr. .. Respondent

Mr. A. A. Pande for the Petitioner.
Mr. A.S. Uraizee a/w. M.V. Singh for Respondent No.1.
Mr. A.S.Khandeparkar a/w. Ms S. A. Joshi for Respondent No.2.

CORAM : M. S. SONAK, J.
DATE : 6 JULY 2015.

P.C. :-

1] This petition is directed against the order dated 22 August 2012 made by the Small Causes Court, Mumbai directing the respondent No.1 (original plaintiff in R.A.D. Suit No. 136/06 of 2006) to implead respondent No.2 as defendant No.2 in the suit.

2] Respondent No.2 applied for impleadment at a stage when the evidence in the suit had already been concluded and the matter was posted for final arguments. Respondent No.2 applied for impleadment on the basis of consent decree in Suit No. 2213 of 1983, as according to respondent No.2, respondent No.2 has become the owner in respect of suit property by virtue of the consent decree. The learned Trial Court, by placing reliance upon the consent decree in Suit No. 2123 of 1983, as also certain other connected litigation

involving the petitioner as well as respondent Nos. 1 and 2 herein has made the impugned order.

3] The petitioner, is the original sole defendant in R.A.D. Suit No. 136/06 of 2006. The said suit seeks the following substantive reliefs:

(a) That this Honourable Court be pleased to declare that the consent terms and the consent decree dated 25th day of September 2001 filed and passed in RAE & R Suit No.1536/5089 of 1981 is bad and illegal and is not enforceable as the same is result of a fraud played by the defendant upon the Plaintiff and as no consideration has been passed over under the said consent terms.

(b) That this Honourable Court be pleased to declare that the Plaintiff is a lawful tenant in respect of the property i.e. 100 Khilas in the nature of covered stable bearing Survey No. 377, Hissan No.2 and 3, C.T.S. No. 117 and 118 situated at Ramnirajan Singh Stable, Datta Mandir Road, Vakola Bridge, Santacruz (E), Mumbai 400 055 and paying monthly rent of Rs.6/- (rupees six only) to the defendant.

(c) That the Honourable Court be pleased to pass a permanent order and injunction restraining the Defendant, his agents, or his person claiming through the defendant from in any manner disturbing and/or interfering with the Plaintiff's possession in respect of the premises being situated at Ramnirajan Singh Stable, Datta Mandir Road, Vakola Bridge, Santacruz (E), Mumbai 400 055 save and except by following due process of law.

4] Learned counsel for respondent No.2 submits that in case any relief is granted in terms of prayer clause (b) and (c) as aforesaid, then respondent No.2 who claims ownership to the suit property in terms of consent decree in Suit No. 2123 of 1983 will be affected. In my judgment, there is no question of any order or decree in R.A.D. Suit No. 136/06 of 2006 affecting the respondent No.2, whom, respondent No.1 (plaintiff) had never chosen to implead as a defendant. Any judgment, decree or order that may be made in R.A.D. Suit No. 136/06 of 2006 will really bind only the petitioner herein, who is a sole defendant in the said suit.

5] That apart, learned counsel for the petitioner has pointed out that respondent No.2 relying upon the consent decree made in Suit No. 2213 of 1983 had instituted suit RAE Suit No. 129/184 of 2010 in the Court of Small Causes at Mumbai, claiming ownership to the suit premises. The said suit has since been dismissed by the judgment and order dated 22 August 2012. The appeal against the same is pending before the Appellate Bench and the same is being perused by both the parties.

6] Upon cumulative consideration of the aforesaid circumstances, in my judgment, there is no necessity for directing the impleadment of respondent No.2 in R.A.D. Suit No. 136/06 of 2006. The disputes *inter se* between respondent Nos.1 and 2 are already pending before the Appellate Bench in the appeal against the judgment and decree dated 22 August 2012. In any case, the present suit is really not the occasion for resolution of such *inter se* disputes. That apart, there will be no prejudice occasioned to the respondent No.2, because any order that may be made in R.A.D Suit No. 136/06 of 2006, will bind only the petitioner herein and respondent No.1, who are the plaintiffs and defendants in the said suit. Accordingly, the order dated 22 August 2012 made by the Small Causes Court and order

dated 27 June 2013 made by the Appellate Bench of the Small Causes Court confirming the same, are set aside.

8] Rule is made absolute in terms of prayer clause (a)

9] It is however, clarified that none of the observations in the two orders, as also in the present order, should in any manner be construed as affecting the rights of the respondent No.2, either in proceedings initiated against the petitioner herein or otherwise. The observations, if any, have been made in the limited context of deciding whether presence of respondent No.2 was at all necessary for the purposes of effective adjudication of the issues raised in R.A.D. Suit No. 136/06 of 2006.

10] In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)