

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

**CIVIL APPLICATION NO.3743 OF 2014
IN
FIRST APPEAL NO.163 OF 2010**

Mr.Freddy Xavier Misquitta .. Applicant

In the matter of

Mrs.Goratti David .. Appellant

Vs.

Municipal Corporation of Greater Bombay
and Anr. .. Respondents

Mr.J.G.Damani for the applicant

Ms.Eventa A. Gonsalves for the appellant

Mrs.M.R.Bhoir for the respondent nos.1 to 3

**CORAM : K.K.TATED, J.
DATED : 17/06/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is for intervening in First Appeal No.163 of 2010 filed by the appellant plaintiff challenging the the Judgment and Decree dated 18.1.2010 passed by City Civil Court at Dindoshi (Borivali

Division) in L.C.Suit No.441 of 2007.

3 It is the case of the applicant that pursuant to the complaint filed by him with the Corporation, the Corporation issued notice under section 351 of the Mumbai Municipal Corporation Act to the appellant plaintiff in respect of unauthorised construction carried out on the suit property i.e. 93, Kalina, Santacruz (East), Mumbai 400 029 on CTS No.6151. He submits that thereafter the appellant preferred L.C.Suit No.441 of 2007. In that suit, the appellant challenged notice issued by the Corporation under section 351 of the Mumbai Municipal Corporation Act and injunction restraining the Corporation from taking any coercive action in respect of unauthorised construction. He submits that in that suit, the applicant preferred Chamber Summons No.81 of 2007. That Chamber Summons was dismissed by the Trial Court on 18.12.2007. Thereafter, applicant preferred Writ Petition No.939 of 2008. That Writ Petition was disposed of by this court by order dated 12.2.2008 directing Trial Court to decide L.C.Suit No.441 of 2007 filed by the appellant plaintiff with S.C.Suit No.389 of 2006 filed by the applicant in Trial Court for injunction restraining the appellant plaintiff from carrying out any unauthorised construction.

4 The learned counsel for the applicant submits that the Trial Court recorded evidence of both the sides in both the suits together but passed separate Judgment and Decree. Hence, he preferred present Civil Application for joining him as party respondent in First Appeal No.163 of 2010.

5 The learned counsel for the applicant further submits that the applicant is claiming co-ownership of the suit property to the extent of 50%. To that effect, the suit is pending before the City Civil Court at Dindoshi. In view of these facts, the learned counsel for the applicant submits that the appellant plaintiff may be directed to join her as respondent in the present First Appeal so that applicant can place on record relevant documents to show that the appellant plaintiff has carried out unauthorised construction on the suit property.

6 On the other hand, the learned counsel for the appellant plaintiff opposed the present Civil Application. They filed their affidavit in reply dated 3.12.2014. Advocate for the appellant plaintiff submits that initially, the applicant preferred Chamber Summons No.81 of 2007 in Trial Court for joining them as party in L.C.Suit No.441 of 2007. That Chamber Summons was dismissed by Trial Court on 18.12.2007. Thereafter the applicant preferred Writ Petition No.939 of 2008. In that Writ Petition also, this court has not granted any relief in favour of applicant for joining him as party in L.C.Suit No.441 of 2007.

7 The learned counsel for the appellant submits that the applicant challenged the ownership of the appellant before the Revenue Authority. The Revenue Authority dismissed the applicant's claim to that effect. He submits that in view of these facts, applicant is not necessary party in the present proceeding. In any case, the dispute is between the appellant and Corporation in respect of unauthorised construction. Corporation is in a position to defend their case. They have all the documents in respect of the suit construction. Hence, there

is no substance in the present Civil Application and same is required to be dismissed with costs.

8 I have heard both the sides at length.

9 It is to be noted that in the present proceeding, applicant preferred Chamber Summons which was rejected. Thereafter, he preferred Writ Petition. In Writ Petition, this court has not granted any relief to the applicant. Up to date, applicant is not declared as owner of the suit property. The dispute in the present proceeding, is in respect of unauthorised construction in suit property. Corporation is party to the present proceeding who can take care of the issue involved in the present case.

10 In view of these facts, I do not find any substance in the present Civil Application. Same is rejected.

(K.K.TATED, J.)