

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

WRIT PETITION STAMP NO.28394 OF 2015

Mr. John D'Mellow : Petitioner.
Versus
Mumbai Corporation of Greater Mumbai
and anr. : Respondents.

Mr. Suraj Kudalkar for the Petitioner.
Mrs. M R Bhoir for the Respondent No.1.
Ms. K P Reshma Ravi for the Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 29th October 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 17/08/2015 passed by the learned Judge of the City Civil Court, Greater Bombay by which order the Chamber Summons being No.1361 of 2015 filed by the Respondent No.2 herein for his impleadment in the suit in question being L.C.Suit No.1556 of 2015 came to be allowed and resultantly, the Respondent No.2 was directed to be impleaded as party Defendant No.2 to the suit.

2 The suit in question has been filed by the Petitioner original Plaintiff challenging the notice issued under Section 354-A of the Mumbai Municipal Corporation Act alleging carrying out of unauthorized construction on the plot of land which was originally owned by one Jerome D'Mello. It is an

undisputed position that the Applicant i.e. the Respondent No.2 herein is the brother of the Petitioner i.e. the original Plaintiff and claims to be the co-owner of the plot of land on which the alleged unauthorized construction was being carried out and in respect of which notice under Section 354-A of the MMC Act has been issued. It seems that the said notice was issued at the behest of the Respondent No.2 who has made a complaint to the Municipal Corporation i.e. the Respondent No.1 against the construction being carried out by the Petitioner/original Plaintiff. The Plaintiff does not dispute the fact that the Respondent No.2 i.e. the Applicant in the Chamber Summons is his brother who he contends has divested himself of his right in the property by executing the agreement in the year 1999 which agreement has not been countenanced by the Trial Court whilst considering the Chamber Summons.

3 In my view, it is not necessary to go into the inter-se dispute as regards the title to the land in question between the two brothers. In so far as the suit is concerned, what is required to be seen is that the Applicant i.e. the Respondent No.2 herein claims to be the co-owner of the property being the son of the said original owner Jerome D'Mello. He is also a person at whose behest the notice under Section 354-A of the MMC Act has been issued by the Municipal Corporation.

4 In my view, the Respondent No.2 herein if not a necessary party is

a proper party to the suit whose presence in the suit would result in the effectual adjudication of the suit. It seems that pursuant to the impugned order the amendment has also been carried out and the amended plaint has also been served upon the Respondent No.2 pursuant to which the Respondent No.2 has also filed his affidavit in reply to the notice of motion filed by the Plaintiff for interim reliefs. In that view of the matter 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]