

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION

NOTICE OF MOTION NO.1438 OF 2014
IN
SUIT NO.1758 OF 2012
WITH
NOTICE OF MOTION NO.2029 OF 2012

Larsen & Toubro Ltd. .. Applicant
Orig. Defendant No.19

In the matter between:

Kamlakar Khanderao Patil & Ors. .. Plaintiffs
-Versus-
Ramesh Moreshwar Patil & Ors. .. Defendants

Mr.S.B.Prabhavalkar with Manoj P. Marathe for plaintiffs
Mr.Ashutosh Kaushik i/b. M.K.Ambalal & Co., for applicant
Defendant No.19
Mr.Nitin Rajguru I/b. H.T.Pawar for defendant No.16
Mr.Chirag Balsara with Ms.Asha Nair i/b. Diamondwala & Co. for
defendant No.18

CORAM : K.R.SHRIRAM, J.
DATE : 4th March 2015.

P.C.

1] This notice of motion is taken out on behalf of the
defendant No.19 to delete the name of the defendant No.19 from
the array of parties in the suit and in all other applications.

2] It is the case of the defendant No.19 that the defendant No.19 has no right, title and /or interest in the suit property but is merely an agent and contractor of defendant No.18 for the construction being carried out at the suit property.

3] It is also an admitted fact that the defendant No.19 is only a contractor appointed by the defendant No.18 for carrying out the construction activities of the defendant No.18.

4] It is also alleged that the plaint does not disclose any cause of action against the defendant No.19. The applicant/ defendant No.19 has also stated that the whole suit is based on consent terms or consent decree to which the plaintiffs and defendant Nos. 1 to 4, 5 to 14 and 15 and 16 were parties, based on which the plaintiff is seeking certain declarations. The defendant No.19 has also stated that he is carrying out the construction activities on the plot of land which is the subject matter of the suit, only as a contractor. In short, the defendant has stated that they have no interest whatsoever in the suit property and whether they are party to the suit or not, any order passed in the suit will directly have a bearing on them and

they will be bound by them, even if they are not party to the suit. The Counsel submitted that, therefore, the applicant is neither a necessary nor a proper party to the suit, in whose absence, effective orders cannot be made.

5] The counsel for the applicant – defendant No.19 also relied upon the judgement of the Apex Court passed in the matter of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Gr. Mumbai and Ors., reported in 1992 (2) SCC 524.

6] Per contra, the counsel for plaintiffs who also finds support from Counsel for defendant No.16, stated that the defendant No.19 is a necessary and proper party. The Counsel for plaintiffs submitted that even if the admitted position is that the defendant No.19 is a contractor of defendant No.18, the fact is that the defendant No.19 was also carrying out work in an adjacent plot and was encroaching illegally and unauthorisedly upon the suit property. In paragraph 16, there is a specific allegation against the defendant Nos. 18 and 19 that the employees of the defendant Nos. 18 and 19 attempted to encroach upon the suit property and the plaintiffs vide

their Advocate's notice dated 19th September 2011 called upon the defendant Nos. 18 and 19 respectively not to enter and/or encroach upon on any part or portion of the plaintiffs' immovable property.

7] In the notice dated 19th September 2011, a copy of which is annexed as Exh."L" to the plaint, in para 4 it is specifically alleged that the employees of defendant No.19 are carrying out development work on adjacent plot of land and have tried to illegally and unauthorisedly encroach upon the suit property. It is also stated that the plaintiffs had resisted the attempts and also complained to the local police authorities about the said attempt of the employees of the defendant No.19.

8] Admittedly, no reply has been sent by defendant No.19 denying these allegations. The Counsel for defendant No.19 stated that the defendant No.18 has replied to the same.

9] Also, no reply has been filed by defendant No.19 to the Notice of Motion No.2029 of 2012 taken out by the plaintiffs.

10] Though in the affidavit in support of the Notice of Motion No.1438 of 2014, defendant No.19 has stated that their role in developing the suit property was only as a contractor and they have no right, title or interest of any nature, the plaintiffs have made a specific allegation of encroachment by defendant No.19 from the adjacent plots into the suit property. Prayer clause (i) to the plaint also seeks a permanent order and injunction restraining the defendants (it would include defendant No.19) from carrying out or commencing any re-development activities or creating any third party rights in respect of the half encroached portion of the suit property.

10] Therefore, certainly, the plaintiffs have disclosed a cause of action in the plaint and, therefore, in my view, at this stage, the defendant No.19 cannot be deleted from the array of parties/defendants.

11] In the circumstances, notice of motion is rejected.

(K.R.SHRIRAM, J.)