

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

WRIT PETITION NO. 1205 OF 2015

Karim s/o Lookmanji Karimbhai Bootwalla	... Petitioner
V/.s	
Salim Aliasger Mohamedi Bootwala & Ors.	... Respondents

Mr. Vishal Kanade with Pranab Chalke i/b D.S.R. Legal for the Petitioner.

Mr. Salim Aliasger Mohamedi Bootwala Respondent no.1 party in-person.

Mr. Vinod Mahadik for respondent no.2 BMC.

CORAM : K. K. TATED, J.

DATED : 19/07/2016

P.C.:

. Heard.

2 By this petition under Article 227 of the Constitution of India the Petitioner applicant challenges the order dated 13.10.2014 passed by Bombay City Civil Court, Mumbai in Chamber Summons No. 6 of 2014 in L.C. Suit No. 916 of 2006 rejecting their application under Order 1 Rule 10 of Code of Civil Procedure, 1908 for joining them as party defendant No.6.

3 The learned counsel for the petitioner submits that in the present proceeding, the respondent no.1 plaintiff filed a suit in Bombay City Civil Court in respect of property known as Bootwala Building admeasuring 582.78 sq. mtrs situated at Dimtimker Road, Nagpada, Mumbai – 400 008. He submits that respondent no.1 plaintiff in plaint

in paragraphs 2 and 6 specifically stated that the applicant is also the co-owner of the suit property. These facts were not considered by the Trial Court at the time of passing the impugned order dated 13.10.2014. He submits that co-owner is necessary party in the present proceeding. If any order passed by the Court, that may affect their right, title and interest in respect of suit property. Hence, this Hon'ble Court be pleased to set aside the order dated 13.10.2014 and allowed Chamber Summons No. 6 of 2014 directing respondent no.1 plaintiff to join him as Defendant No.6 in L.C. Suit No. 916 of 2006. He submits that if Writ Petition is not allowed, irreparable loss will be caused to the petitioner.

4 On the other hand, the respondent no.1 party in person vehemently opposed the present Writ Petition. He submits that though the applicant is co-owner of the suit property, he failed and neglected to take appropriate steps immediately for joining him as party. He submits that suit is pending since 2006 for hearing and final disposal. He submits that in 2004 when prospective buyer given notice in newspaper about the transfer of right title and interest in respect of suit property, the applicant failed to take any action immediately. Now, when the matter is reached for final hearing, at that time, the applicant preferred the present Chamber Summons for joining him as party. He submits that even in the present Chamber Summons, the applicant is raising objection about his right, title and interest in the suit property to the extent of 2/13rd share. He submits that plaintiffs filed suit for simplicitor injunction and not for deciding right, title and interest in the present suit. In support of his contention, he relied on the judgment of

the Apex Court in the matter of ***Ramesh Hiranand Kundanmal V/s. Municipal Corporation of Greater Bombay & Ors. reported in 1992 SCC(2) 524.*** He submits that there is no substance in the present Writ Petition and same to be dismissed with costs.

5 I heard both the sides at length. It is to be noted that in the present proceeding, the petitioner being a co-owner of the suit property preferred Chamber Summons for joining him as party. The respondent no.1 on his own in plaint in paragraphs 2 and 6 specifically stated that petitioner is also co-owner of the suit property. In the capacity of co-owner, petitioner is necessary party in the present proceeding filed by respondent no.1. These facts were not considered properly by the Trial Court. The authority cited by the respondent no.1 in the matter of Ramesh Hiranand Kundanmal(supra) is not applicable to the facts and circumstances of the present case because in the case in hand, the co-owner has filed application for joining them as party.

6 Considering this fact, I am of the opinion that petitioner has made out case for allowing this Writ Petition.

7 Hence, following order is passed:

a) Order dated 13.10.2014 passed by Bombay City Civil Court, Mumbai in Chamber Summons No. 6 of 2014 in L.C. Suit No. 916 of 2006, is set aside.

b) Chamber Summons No. 6 of 2014 filed by the petitioner is

allowed in terms of prayer clause (a), which reads thus:

“a) That the Hon'ble court be pleased to allow the Applicant to be impleaded as party Defendant No.6 to the present suit.”

c) Respondent No.1 plaintiff is directed to carry out amendment in the plaint within four weeks from today and serve amended copy on added defendant.

d) Added defendant to file his written statement within two weeks from the service of amended copy of plaint and serve copy on plaintiffs.

e) The hearing of L.C.Suit No. 916 of 2006 is expedited.

(K.K.TATED, J.)