

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

WRIT PETITION (STAMP) NO.3784 OF 2016

Mr. Pradeep Bhalchandra Keer

.. Petitioner

Versus

Commissioner of Police

For Greater Mumbai, and others

.. Respondents

Mr. Abhay A. Anturkar a/w Mr. C. N. Chavan, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 22nd FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 27.07.2015 passed by the Learned Judge of the Small Causes Court, Mumbai, by which order, the application Exh.18 filed by the Respondent No.4 for her impleadment in the suit in question came to be allowed and the Petitioner herein i.e. the original Plaintiff was directed to implead her as party Defendant to the suit.

2. The suit in question being RAE Suit No.1717 of 2014 is filed by the Petitioner/original Plaintiff for eviction of the Respondent Nos.1 to 3 from the suit premises inter-alia on the grounds mentioned in the said suit. It appears that the disputes between the landlords inter-se as regards

the ownership of the property was the subject matter of the suit being High Court Suit No.807 of 1947. In the said suit, consent terms came to be filed on 16.02.2004. By virtue of which, the shares of each of the co-owners came to be specified. In so far as the Petitioner/ original Plaintiff is concerned, he has 12.5% share. The Respondent No.4 i.e. the applicant who is the sister of the Petitioner has also 12.5% share. It is on the said basis that she filed the instant application Exh.18 for her impleadment in the suit. It was her case in the said application that the Plaintiff is filing one suit after the other against the tenants as a owner which is in violation of the spirit of the consent terms. The application Exh.18 was replied to on behalf of the Plaintiff and it was sought to be contended that as a co-owner and co-landlord the Plaintiff is having authority to file the suit in question. It was further sought to be contended that the presence of the Applicant is not necessary for determining the issues which would arise in the suit. The Trial Court considered the said application and has by the impugned order dated 27.07.2015 allowed the same.

3. The said order was taken exception to by the Petitioner by filing Revision Application being No340 of 2015 before the Appellate Bench of the Small Causes Court. The Appellate Bench of the Small Causes Court dismissed the said Revision on the ground of its maintainability having regard to the Full Bench judgment of this Court in **Bhartiben Shah**

Vs. Gracy Thomas & ors reported in (2013 Bom. R. C. 247). The Petitioner has not challenged the said order passed in Revision and it is the order dated 27.07.2015 which is taken exception to by way of the above Petition.

4. It is the contention of the Learned Counsel for the Petitioner Mr. Abhay Anturkar that the Plaintiff being dominus-litus, the Applicant cannot foist herself as a Defendant in the suit. It was also the submission of Mr. Abhay Anturkar that the Plaintiff being a co-owner was entitled to file the suit in question and in support of the said contention sought to place reliance on the judgment of the Apex Court reported in (1976) 4 SCC 184 in the matter of Sri Ram Pasricha Vs. Jagannath and others.

5. In my view, it is not possible to accept the said contentions. No doubt, the Plaintiff is dominus-litus in so far as the suit is concerned. However, it is required to be borne in mind that the instant suit is a suit in respect of a tenanted property in respect of which there are other co-owners and such co-owners are therefore entitled to file an application for impleadment. In so far as the second contention is concerned, no doubt a suit for eviction filed by a co-owner is maintainable. However, the applicant who is admittedly a co-owner can be said to be a proper party in the context of the reliefs which are claimed in the suit. In my view,

therefore, the test that a person has to be either a necessary or a proper party to a suit to be entitled to be impleaded is satisfied in the present case as there is no doubt about the fact that the Respondent No.4 is a co-owner. The issue of title amongst the co-owners does not arise in the suit. No prejudice would also be caused to the Plaintiff if a co-owner is impleaded. In my view, therefore, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]