

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2441 OF 2016

Nelson George Wilington @ Downey through his
Constituted Attorney Minal Mohan Lokegaonkar ... Petitioner
Vs.
Jyoti Pattam and others ... Respondents

Mr. Vijay Patil i/b. Mr. Jagdish Jayale for Petitioner.
Mr. Kunal V. Phoole for Respondent No.1.
Mr. Sandeep V. Mahadik for Respondents No.4 to 8.

CORAM : R. G. KETKAR, J.
DATE : MARCH 30, 2016

P.C. :

Heard Mr. Patil, learned Counsel for petitioner, Mr. Phoole, learned Counsel for respondent No.1 and Mr. Mahadik, learned Counsel for respondents No.4 to 8 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 28.01.2016 passed by the learned Judge presiding over Court Room No.7 of the City Civil Court at Dindoshi, Borivali Division, Mumbai in Chamber Summons No.1124 of 2015 in Long Cause Suit No.2690 of 2015. By that order, the learned trial Judge allowed the Chamber Summons taken out by respondents No.4 to 8 herein and directed the petitioner, hereinafter referred to as plaintiff, to implead them as defendants No.4 to 8 in the Suit and Notice of Motion.

3. Plaintiff has instituted Suit against respondents No.1 to 3 under Sections 34 to 38 of the Specific Relief Act, 1963 inter alia praying for perpetual injunction restraining respondent No.1-defendant No.1 from carrying out any unauthorized work of additions, alterations,

construction, erection and / or in any manner encroaching and / or interfering with the suit property namely room No.3, 4 and 5 situate on Survey No.152, Hissa No.2 (pt.), C.T.S.No.1707/1 to 1707/6, Sohan Singh Chawl, Vatsala Niwas, G. W. Downey Chawl, Near Municipal Garden, Khotwadi, T.P.S. VI, Santacruz (West), Mumbai 400 054 (for short 'suit property'); for mandatory injunction against respondents No.2 and 3 for taking action as contemplated under Sections 351 and 354-A of the Mumbai Municipal Corporation Act, 1888 and further actions under the provisions of the Maharashtra Regional and Town Planning Act, 1966.

4. During the pendency of the Suit, respondents No.4 to 8 took out Chamber Summons inter alia on the ground that the suit property was owned by one Mr. George Willington Downey. George Willington Downey died leaving behind - (1) Wilson George Downey, (2) Martin George Downey, (3) Rubin George Downey, (4) Nelson George Downey and (5) Violet Willington Bernard. Respondent No.4 herein is the husband and respondents No.5 to 8 are the sons and daughter of Ms Violet Willington Bernard. Respondents No.4 to 8 contend that being the legal representatives of George Willington Downey, they are entitled to the suit property. Respondents No.4 to 8 further came with the case that since 1988, Ms Violet Willington Bernard was managing the suit property being the landlord and respondent No.1 being the tenant at monthly rent of Rs.75/-. In support of that, they have also produced counter receipts of the suit property. Respondents No.4 to 8 further contended that plaintiff is not concerned with the suit property. In fact being the landlord, they have instituted Suit bearing No.617 of 2013 against one of the tenants. By the impugned order, the learned trial Judge has allowed the Chamber Summons. It is against this decision, plaintiffs have instituted the present Petition.

5. Mr. Patil strenuously contended that no relief is claimed against respondents No.4 to 8. They are not necessary parties. If at all they have any grievance, they are free to institute separate proceedings for ventilating their grievances. He, therefore, submitted that the learned trial Judge was not justified in allowing the Chamber Summons.

6. On the other hand, Mr. Mahadik supported the impugned order. He relied upon Section 2(11) of C.P.C. as also decision of the Apex Court in the case of *M/s. Aliji Monoji and Co. Vs. Lalji Mavji and others*, AIR 1997 SC 64.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is no doubt true that plaintiff has not claimed any relief against respondents No.4 to 8. However, prima facie, it appears that respondents No.4 to 8 are claiming to be legal representatives of Ms Violet Bernard who is the daughter of George Willington Downey. In paragraph 7, the learned trial Judge considered the decision of the Apex Court in the case of *M/s. Aliji Monoji and Co. (supra)* and observed that the landlord has direct and substantial interest in the demised building. In paragraph 8, the learned trial Judge observed that presence of respondents No.4 to 8 herein is necessary for effectual and complete adjudication of the questions involved in the Suit. In other words, the learned trial Judge came to the conclusion that respondents No.4 to 8 are proper party and their presence is necessary for effectual and complete adjudication of the questions involved in the Suit. I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)