

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2662 OF 2015

Mrs.Sharda Namdeo Khartmol .. Petitioner

vs.

The Municipal Corporation of Greater
Mumbai and Anr. .. Respondents

Mr.Mayur Khandeparkar with Mr.Chandra Naik with Miss Charushala
Gorad for the petitioner

Mr.Yogesh Vora with Mr.J.V.Rasal for the respondent no.2

Mr.Vinod Mahadik for the BMC / respondent no.1

CORAM : K. K. TATED, J.
DATE : AUGUST 9, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the Petitioner plaintiff challenges the order dated 29.1.2015 passed by Bombay City Civil Court, Mumbai in Chamber Summons No.1711 of 2014 in L.C.Suit No.1297 of 2015 allowing respondent no.2's application for joining them as proper party in the Suit.

3 In the present proceeding, because of complaints made by respondent no.2 to the Corporation, Corporation issued notice under section 354 A of the Mumbai Municipal Corporation Act, 1888 to the

petitioner in respect of her structure in CTS No.174A. Petitioner plaintiff filed L.C.Suit No.1297 of 2014 in Bombay City Civil Court, Mumbai challenging the notice under section 354A of the Mumbai Municipal Corporation Act, 1888 dated 25.4.2014 in respect of the Suit premises i.e. Room Structure No.31 KULL000001, opp. Khan Garage, N.S.S.Road, Balasaheb Desai Vasahat, Ghatkopar West, Mumbai 400083. In that suit respondent no.2 Society preferred Chamber Summons No.1711 of 2014 for joining them as party defendant on the ground that the suit structure is situated in the property CTS No.174A. They pleaded in the Chamber Summons that Corporation issued notice under section 354A of the Mumbai Municipal Corporation Act, 1888 on the basis of their complaints. Hence, they are necessary and or proper party in the proceeding so that they can place all the material before the court.

4 Considering the submission, Trial Court passed impugned order dated 29.1.2015 allowing respondent no.2's Chamber Summons No.1711 of 2014 directing petitioner plaintiff to carry out amendment and implead respondent no.2 as original defendant no.2 in the plaint as well as in the Notice of Motion. Hence, the present Writ Petition.

5 The learned counsel for the petitioner plaintiff submits that court below erred in coming to the conclusion that respondent no.2 is a proper party in the Suit filed by them challenging the notice under section 354A of the Mumbai Municipal Corporation Act, 1888. He submits that though the Trial Court categorically held that respondent no.2 Society is not owner of the Suit property, inspite of that allowed their Chamber Summons. He submits that petitioner plaintiff is holding photo pass, ration card and other documents to show that she

is in possession of the suit structure. He submits that Collector has issued photopass. That itself shows that the suit structure is standing in the collector land. Inspite of that, Trial Court allowed Society's respondent no.2's Chamber Summons and directed plaintiff to join them as party defendant in the suit which is contrary to the law. Hence, Hon'ble Court be pleased to allow the present Writ Petition.

6 The learned counsel for the petitioner submits that Trial Court failed to consider the order dated 5.12.2009 in Chamber Summons No.348 of 2009 in L.C.Suit No.1103 of 2009. He submits that the said suit was filed by the petitioner's husband Namdeo in respect of the structure on CTS No.174A. In that Suit, respondent no.2 Society preferred Chamber Summons No.348 of 2009 for joining them as party. That Chamber Summons was dismissed by Bombay City Civil Court, Mumbai holding that society was not necessary and or proper party in the Suit filed by petitioner's husband. He submits that, that order was not challenged either by Corporation and or by Society. Inspite of that Trial Court allowed the application filed by respondent no.2 Society for joining them as party defendant. He submits that in the interest of justice, this Hon'ble Court be pleased to set aside impugned order dated 29.1.2015 passed by Trial Court. He submits that if present Writ Petition is not allowed, irreparable loss and injury will be caused to the petitioner.

7 On the other hand, the learned counsel for the respondent no.2 Society vehemently opposed the present Writ Petition. He submits that Trial Court considering the document on record, held that Society is proper party in a suit filed by petitioner plaintiff. He submits that Trial Court has considered the fact that on the basis of respondent no.2's

complaint Corporation has issued notice under section 354 A of the Mumbai Municipal Corporation Act, 1888. He submits that portion of CTS No.174A allotted by the Government to them for housing purpose. To that effect, he relies on the property card which is on page 61. On the basis of these submissions the learned counsel for the respondent no.2 Society submits that there is no substance in the present Writ Petition and same is required to be rejected.

8 The learned counsel for the respondent no.2 submits that as per order dated 29.1.2015 passed by Trial Court petitioner plaintiff carried out amendment in plaint. Not only that respondent no.2 Society already filed their written statement.

9 The learned counsel for the respondent no.1 Corporation submits to the courts order. He submits that main dispute is between petitioner and respondent no.2 only.

10 I have heard both the sides. It is to be noted that in the present proceeding, Trial Court held that respondent no.2 is not owner of the suit property. Trial Court also held that on the basis of complaint filed by respondent no.2 Society, Corporation issued notice under section 354A of the Mumbai Municipal Corporation Act, 1888 to the petitioner. Hence, respondent no.2 Society is proper party in suit filed by petitioner plaintiff. It is to be noted that main dispute is between petitioner and respondent no.1 Corporation. Corporation acted on the basis of complaint filed by respondent no.2. Hence, now the Corporation have to satisfy that petitioner has carried out unauthorised construction on CTS 174A. Hence there is no reason to hold that respondent no.2 is a proper party in a suit filed by petitioner against

the Corporation. These facts were not considered by the Trial Court. Same is required to be set aside. Hence, following order is passed:

- a) Writ Petition is allowed.
- b) Order dated 29.1.2015 passed by Bombay City Civil Court, Mumbai in Chamber Summons No.1711 of 2014 in L.C.Suit No.1297 of 2014 is set aside.
- c) Liberty granted to the petitioner plaintiff to carry out appropriate amendment in L.C.Suit No.1297 of 2014 within 8 weeks from today.
- d) Writ Petition stands disposed of accordingly.

JUDGE