

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

WRIT PETITION NO.3321/2013

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. S. S. Redij for the petitioner
Mr. Yahya Ghoghani i/b. Vigil Juris for the respondent Nos.4 and 8.

CORAM : K. K. TATED, J.

DATE : JUNE 16, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner applicant third party challenges the order dated 08.02.2013 passed by the Bombay City Civil Court, Mumbai in Chamber Summons No.754/2011 in Short Cause Suit No.3019/1995 rejecting the application made by him for joining as a party defendant in suit.

2. It is the case of the petitioner that in the present proceedings, the respondent plaintiff filed short cause suit No.3019/1995 in respect of the land admeasuring 504 sq.mtr. from Sy.No.292, H.No.11 (part) CTS No.5144 of village Kolekalyan, Tq. Andheri for declaring him as owner. Prayer clauses (a) to (c) of the suit read thus:

“a) That the Hon'ble Court be pleased to declare this plaintiff to be the owner of the suit land bearing sy.no.292, Hissa No.11 (part), CTS No.5144 at village Kolehayan, Tq. Andheri, BSD admeasuring 504 sq.mtrs. along with the structure standing thereon i.e. at CST road near petrol pump, Tank Road, Kalina, Santacruz (East), Bombay – 400 098 and more particularly shown in the plan annexed and marked exhibit A herein by adverse possession.

b) That pending the hearing and final disposal of the suit, the Hon'ble Court be pleased to restrain the defendants, their servants and agents from and in any manner disturbing the possession of this plaintiff in the suit land as described in prayer clause (a) above and or doing any act/deed/thing prejudicial to the interest of this plaintiff therein.

c) Ad-interim and interim orders in terms of prayer clause (b) above.”

3. The learned counsel for the petitioner submits that the petitioner is also in possession of the same land on the basis of deed of assignment, sub lease dated 06.08.1985. Hence, the petitioner made an application before the Trial Court for joining as party defendant, because if any order is passed in that suit, that will affect the right, title and interest of the petitioner. During the course of argument, the advocate for the petitioner admitted that, the petitioner has not placed on record before the Trial Court any documents to show that the suit

property was sub let to the petitioner by deed of assignment dated 06.08.1985. This itself shows that the petitioner failed to point out the exact area of the suit property which is in their possession. If the petitioner fails to do so, there is no question of joining them as party defendant in S.C.Suit No.3019/1995. These facts were considered by the Trial Court at the time of passing the impugned order. Hence, I do not find any reason to interfere with the well reasoned order passed by the Trial Court. Writ Petition sands rejected.

4. It is made clear that the petitioner is free to take appropriate steps to protect his right according to law.

JUDGE