

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

WRIT PETITION NO.4281 OF 2015

Shri Deepak Balwant Khanvilkar

.. Petitioner

vs.

Municipal Corporation of Greater
Mumbai & Ors.

.. Respondents

Mr.Durgaprasad Sabnis i/b M/s.Lex Firmus for the petitioner

Mrs.Prabha U. Bhadadare for the respondent no.2

CORAM : K. K. TATED, J.

DATE : JULY 4, 2016

PC.:

1 Heard.

2 By this petition under Article 227 of the Constitution of India, the Petitioner plaintiff challenges the order dated 13.11.2014 passed by City Civil Court, Dindoshi, Mumbai in Chamber Summons No.411 of 2013 in Long Cause Suit No.615 of 2013 allowing respondent no.2's application directing plaintiff to add him as defendant no.2 in Suit.

3 In the present proceeding, respondent no.1 Corporation issued notice dated 20.4.2010 under section 351 of the Mumbai Municipal Corporation Act, 1888 and subsequently order was passed by Asst.

Commissioner R/Central Ward dated 14.2.2013 calling upon the plaintiff to remove unauthorised construction carried out by him in Shop No.11 in Chawl known as Chavan Chawl, Dattapada, Near Subway, Borivli (East), Mumbai. That notice under section 351 and order passed by Corporation was challenged by the plaintiff by filing Long Cause Suit No.615 of 2013. In that Suit, respondent no.2 defendant no.2 filed Chamber Summons for joining him as party defendant on the ground that original owner of the Suit premises assigned development rights in his favour by agreement for development and Power of Attorney dated 8.7.2003. Same was allowed by the Trial Court. Hence, the present Writ Petition.

4 The learned counsel for the petitioner submits that the court below failed to consider the fact that defendant no.2 failed to show any interest in the suit premises. He submits that notice issued by the Corporation under section 351 of the Mumbai Municipal Corporation Act, 1888 was in respect of alleged unauthorised construction carried out by the plaintiff. Hence, main dispute was between plaintiff and Corporation only.

5 The learned counsel for the petitioner submits that court below failed to consider the fact that during the pendency of the suit, defendant no.2 assigned his rights for development in favour of one M/s.S.S.S. Enterprises a partnership firm registered under the Indian Partnership Act, 1932 represented by Shokinkumar Shankarlal Jain and Shyam Govind Shah. This means on the date of filing of Chamber Summons, defendant no.2 had no right, title and interest in the suit

premises. In spite of that, Trial Court allowed defendant no.2's application for joining him as party in the pending suit. In support of this contention, he relies on the judgment of the Apex Court in the matter of ***Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay, 1992 (2) SCC 524***. On the basis of these submissions and the law declared by the Apex Court, the learned counsel for the plaintiff submits that impugned order passed by Trial Court is required to be set aside.

6 On the other hand, the learned counsel for the defendant no.2 vehemently opposed the present Writ Petition. He submits that Trial Court has considered the fact that defendant no.2 has right, title and interest in respect of the suit property. She submits that in the present proceeding, defendant no.1 Corporation issued notice u/s 351 of the Mumbai Municipal Corporation Act, 1888 against the plaintiff in respect of unauthorised construction carried out by him in the suit premises. She further submits that though the plaintiff relies on the deed of assignment dated 1.2.2012 by which defendant no.2 assigned his rights to M/s.S.S.S.Enterprises, defendant no.2 is also partner of the said firm. Therefore, it is not correct to state on the part of the plaintiff that defendant no.2 has no right, title and interest in respect of the suit property. She submits that if Corporation fails to take any action for demolition of unauthorised construction, that will affect defendant no.2's right. These facts were considered by the Trial Court. She further submits that by deed of assignment, defendant is entitled to take all steps for redevelopment of the Suit premises.

7 The learned counsel for the defendant no.2 submits that pursuant to the order passed by Trial Court plaintiff carried out amendment and served amended copy of plaint on them. She submits that they already filed their written statement to the amended copy of plaint. Hence, there is no substance in the present Writ Petition and same be dismissed with costs.

8 I have heard both the sides. It is to be noted that in the present proceeding, original owner assigned their rights in favour of defendant no.2 for carrying out development in respect of the suit property. If any order is passed by the court in respect of unauthorised construction, that would affect defendant no.2's rights. In any case, as on today defendant no.2 has right, title and interest for developing the suit property. Apart from that, plaintiff already carried out amendment in the plaint and the defendant no.2 filed their written statement also. The authority relied on by the plaintiff in the matter of ***Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay*** (Supra) is not applicable in the facts and circumstances of the present case. In that authority, the Apex Court in paragraph 18 specifically held that court has to decide the necessity and interest of the third party on the basis of their claim. In the case in hand, defendant no.2 has right, title and interest to develop the suit property.

9 Considering these facts, I do not find any substance in the present Writ Petition. Hence, Writ Petition stands rejected. No order as to costs.

JUDGE