

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.9612 of 2016
[Converted from Civil Revision Application NO. 280 OF 2016]

Kanak Babulal Shah ...Applicant/
Petitioner

Versus

Mr. Chandrakant Babulal Shah ...Respondents
And Ors

With
Civil Application No.291 of 2016
In
Writ Petition No.9612 of 2016
[Converted from Civil Revision Application NO. 280 OF 2016]

WITH
Writ Petition No.9611 of 2016
[Converted from Civil Revision Application NO. 281 OF 2016]

Kanak Babulal Shah ...Applicant/
Petitioner

Versus

Mr. Chandrakant Babulal Shah ...Respondents
And Ors

Civil Application No.292 of 2016
In
Writ Petition No.9611 of 2016
[Converted from Civil Revision Application NO. 281 OF 2016]

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Mr.Pankaj S. Shah, Advocate for the Applicant/Petitioner.

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CORAM : R. G. KETKAR, J.

DATE : 04th August, 2016

P.C.

1. Not on board. At the request of Mr. Shah taken up for admission. Heard Mr. Pankaj Shah, learned Counsel for the applicant, at length.

2. By these applications under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the judgment and order dated 31.3.2016 passed by the learned Judge, presiding over Court Room No.21 of the Small Causes Court at Mumbai. By these orders, the learned trial Judge rejected the applications made by the applicant for impleading him as a party plaintiff in the suits with direction to the plaintiffs to carry out necessary amendment accordingly. In view thereof, leave to convert these Civil Revision Applications into Writ Petitions is granted. Amendment shall be carried out within one week from today. As the controversy raised is identical and the parties are also one and the same, these Petitions can conveniently be disposed of by this common order.

3. In support of these Petitions, Mr. Shah strenuously contended that one Sundarlal Laxmichand Shah had inherited certain immovable properties situate at Mumbai as well as at

Jamnagar (Gujarat) from his father late Leeladhar Kalyanji Ladawala (Shah). Sundarlal Laxmichand Shah died intestate on 31.10.1943 at Jamnagar survived by his son late Babulal Sundarlal Shah as his sole heir and legal representative. Said late Babulal Sundarlal Shah married to Vrajkuwar. Babulal Sundarlal Shah also died intestate on 6.10.2006 at Mumbai. Babulal Sundarlal Shah is survived by his wife Vrajkuwar and his sons petitioner and plaintiff No.1 and a married daughter Kalavanti Dhirajlal Parikh (who is not party to the suit) and one late Rajvanti, his other daughter who died unmarried on or about 20.2.1969 at Mumbai. Babulal being the only son and legal heir of Sundarlal Shah, he became absolute owner of the property situate at Mumbai as well as at Jamnagar (Gujarat) after the death of Sundarlal Shah.

4. The petitioner is legally entitled to claim and receive $\frac{1}{2}$ share in the share of his mother Vrajkuwar in respect of the properties left behind by Babulal after his death. The properties left behind by Babulal consists of a tenanted property known as "Liladhar Mansion" having ground plus three upper floors and common toilet, chawl and stair case. He submitted that being a

co-owner, the petitioner is entitled to collect and receive rent from the tenants. While rejecting the application, learned trial Judge observed in paragraph-11 that though admittedly the petitioner is a co-owner of the suit premises/suit building, the plaintiffs are looking after the management of the suit premises and collecting the rent from the tenants. Therefore, the petitioner, even though a co-owner, cannot be claimed to be landlord of the suit building/suit premises. He submitted that the said finding is patently erroneous. Mr. Shah further submitted that in the event of suit instituted by the plaintiffs being decreed, after obtaining possession they will put the lock on the suit premises. In other words, even if the possession of the suit premises is received, the plaintiffs will not use the suit premises after obtaining possession from the defendants tenants. As the petitioner is a co-owner, the learned trial Judge should have allowed the application so as to enable him to participate in the trial. During the course of hearing, he also stated that the petitioner has instituted suit for partition and the same is pending. Mr. Shah submitted that the application made under Order I Rule 10 of C.P.C. deserves to be allowed.

5. I have considered the submissions advanced by learned Counsel for the petitioner. I have also perused the material on record. In paragraph-8 of the application, the petitioner has averred that plaintiff No.1 is in control of all the tenants in Mumbai property and has been receiving and realizing the rent income from them since April, 1992 without paying any amount to the petitioner out of the rent income received by him. As noted earlier, the petitioner has also instituted suit for partition against plaintiff No.1 and the same is pending. It is not in dispute that plaintiff No.1 is co-owner of Liladhar Mansion as also petitioner is a co-owner. As the plaintiffs are looking after the management of the suit premises as also collecting rent from the tenants, they are entitled to maintain the suit against the tenants for recovery of possession. The learned trial Judge, however, was not justified in observing that the petitioner even though a co-owner, he cannot claim to be a landlord of the suit building/suit premises. Said finding is patently erroneous. It, however, does not vitiate the impugned order. Order I Rule 10 of C.P.C. postulates that a party who is either a necessary or a property part can be impleaded for deciding the controversy raised between the parties. It is settled

position in law that one of the co-owners can maintain the suit for eviction. If at all the petitioner apprehends that after getting possession of the suit premises from the tenant, the plaintiffs will not use the suit premises, it is open for him to take out appropriate proceedings in the suit for partition for obtaining interim reliefs.

6. In my opinion, the petitioner cannot be treated as either a necessary or a property party. It is settled position in law that the plaintiff is a *dominus litis* and no party can be allowed to be impleaded in the suit against the wishes of the plaintiff unless said party is either a necessary or a proper party. Subject to this clarification, no case is made out for interfering with the impugned orders. Petitions fail and the same are dismissed. In view of dismissal of Writ Petitions, Civil Application No.291/2016 and 292/2016 do not survive and same are also disposed of.

(R. G. KETKAR, J.)