

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6498 OF 2015**

1. Anthony Devasy Sebastian; ..Petitioners
2. Helen Anthony Sebastian.

Vs

The Municipal Corporation of Gr. .. Respondents
Bombay
And
Margaret Dinkar Dhiver;

Mr. Satyendra R. Singh, Advocate for Petitioners.
Mr. Vinod Mahadik, Advocate for Respondent No.1.
Mr N.P.Wagle, Advocate for respondent no.2.

CORAM : R.G.KETKAR,J.
DATE : 21/01/2016

PC:

1. Heard Mr. Satyendra Singh, learned counsel for the petitioners, Mr.Vinod Mahadik, learned counsel for respondent no.1 and Mr. N.P. Wagle, learned counsel for respondent no.2 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 7.1.2015 passed by the learned Judge, City Civil Court Bombay in Chamber Summons No.1536 of 2014 in Long Cause Suit No.3344 of 2013. By that order, the learned trial Judge allowed the Chamber Summons taken out by respondent no.2 for impleading her as party defendant in suit instituted by the

petitioners, hereinafter referred to as 'plaintiffs'.

3. The plaintiffs have instituted suit for declaration that the threatened action of demolition of suit premises or any part thereof in pursuance of letter dated 31.7.2013 addressed by Assistant Municipal Commissioner, M-West Ward, is illegal, bad in law, null and void, arbitrary, inoperative, among other prayers. During the pendency of the suit, respondent no.2 hereinafter referred to as defendant no.2, took out Chamber Summons for impleading her as defendant. In support of Chamber Summons, she filed affidavit, inter alia, contending that she along with five sisters are co-owners of the property bearing Plot no.503-A, C.T.S No.1424 of Chembur Village, Taluka:Kurla, within the registration District Mumbai and Sub-district of Chembur, Mumbai 400 071, Admeasuring about 710 sq.yards together with a building known as Vishranti Apartment, which land and building is assessed by respondent no.1, hereinafter referred to as defendant no.1. The said building is ground plus three storeys and an annex building wing of stilt and two upper floors and a garage constructed as per the sanctioned plans.

4. Defendant no.2 contended that the plaintiffs have illegally and unauthorizedly constructed the compound wall which was originally 4 feet tall. The property is illegally extended to about 18 feet in height without obtaining permissions either from the

owners or from the Corporation. It is further contended that she has filed Caveat No.623/13 and 624 of 2013 even in the present suit. However, she was not served with proceedings.

5. By the impugned order, the learned trial Judge allowed the Chamber Summons on the ground that defendant no.2 has substantial interest in the suit structure. The case of defendant no.2 is that unauthorised construction is carried out by the plaintiff on the common wall owned by her and the plaintiffs. She had made complaint to defendant no.1-Corporation and in pursuance thereof notice under section 351 of the Mumbai Municipal Corporations Act,1888 was issued. Her presence before the Court is necessary to enable the Court to decide the suit completely and effectually.

6. Mr. Singh has taken me through (1) paragraph 11 of affidavit in reply in support of Chamber Summons as also (2) letter dated 31.7.2013 impugned in the suit as also the Consent Terms signed by the plaintiffs and defendant no.2, among others and in particular clause 1(v), clause 2(i), to contend that defendant no.2 is given 1/9th share for herself as a joint co-owner as and by way of her full and final 1/9th share in the said estate one half undivided share in flat no.1, totally admeasuring 899.87 sq.ft. along with porch on the ground floor of the said building Vishranti Apartments. The Consent Terms also recited that each

of the parties acquite, release, relinquish and discharge their all rights, title and interest and/or claim in or into the property i.e. the building and the plot except the portion of the property specifically allotted to each individual party. In other words, he submitted that defendant no.2 has no interest in respect of subject matter of the suit and, therefore, the trial Court ought not to have allowed Chamber Summons. He also relied upon the decision of this Court in the case of Sanjiv Ganpati nawal Vs. Shamrao Namdeorao Patil, 1994 Mh.L.J.628.

7. On the other hand, Mr. Wagle supported the impugned order. He submitted that clause 1(ii) of the Consent Terms recited that plot no.503 of Suburban Scheme III of Chembur corresponding to C.T.S No.1425 of Chembur Vilalge, Kurla Taluka situate at 12th Road, Chembur Mumbai 400 071, is jointly owned by the parties to the Consent Terms.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The short point is whether the learned trial Judge has committed any error while allowing the Chamber Summons. The learned trial Judge has prima facie observed that defendant no.2 claims that common wall is owned by her and the plaintiffs and that plaintiffs have carried out unauthorised construction on the common wall. She had made complaint to

defendant no.1-corporation and in pursuance thereof notice under section 351 was issued to the plaintiffs. In paragraph 8, the learned trial Judge observed that by making unauthorised construction, the plaintiffs have caused obstruction to free flow of light and air to her premises. Defendant no.2 has, therefore, substantial interest in the subject matter of the suit. The learned trial Judge also noted that in fact defendant no.2 had filed Caveat Applications no.623 and 624 of 2013 against the present plaintiffs. However, she was not made party in the suit.

9. Mr. Singh relied upon the decision of the case in the case of Sanjiv Ganpati Nawal (supra). In that case, the Court was considering a suit instituted for specific performance of contract. The said judgment is not applicable to the facts of the present case. Hence, Petition fails and the same is dismissed.

10. Time to carry out amendment is extended by 14 days from today. Order accordingly.

(R.G.KETKAR, J.)