

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5389 OF 2016

Yamuna wd/o Bommaya Kotian & ors .. Petitioners

vs

Sukhdev Bomayya Kotian & ors .. Respondents

Mr.S.K.Dubey for Petitioner

None for Respondents

CORAM: G.S.KULKARNI, J

DATE: 4 OCTOBER 2016

P.C.

1. Heard learned counsel for the petitioner.
2. This writ petition takes an exception to the order dated 2.7.2015 passed by the learned Judge, City Civil Court, Bombay whereby Chamber Summons No.2834 of 2014 in L.C.Suit No.1440 of 2014, taken out on behalf of the petitioners for a prayer that the petitioner be impleaded as a necessary party to the suit is rejected.
3. I have perused the impugned order as also orders passed by this Court in some ancilliary proceedings arising between the parties and more particularly in writ petition No.670 of 2013 dated 3 May 2013 passed by the Division Bench and orders passed by the learned single Judge in writ petition (Lodging) No.2204 of 2013

dated 28 November 2013.

4. Admittedly, the plaintiff's suit is to challenge the action of the Municipal Corporation in issuing a notice under section 351 of the Mumbai Municipal Corporation Act, in regard to the illegal construction as complained in the notice. The case of the petitioners in the Intervention Application/Chamber Summons is that they are also the owners of the suit property and in view of the illegal construction of the petitioner the rights of the petitioner are also affected. Another contention is that the respondent/original plaintiff is also relying on some bogus and fabricated documents. The Municipal Corporation of Greater Mumbai also opposed the application of the petitioner seeking intervention on the ground that the petitioners are not necessary parties considering the nature of the suit. It also appears that the petitioner has been supporting the case of the Municipal Corporation and that the Municipal Corporation is already defending the suit.

5. Having perused the impugned order and having heard learned counsel for the petitioner on the assertions made in the petition, it is apparent that the petitioner has a dispute against the

plaintiffs. On the assertions as made in the Chamber Summons the petitioners can espouse their case and assert their legal rights if any against the plaintiffs in appropriate proceedings as permissible in law. I thus do not find any perversity in the impugned order passed by the learned trial Judge rejecting the Chamber Summons of the petitioner. The learned Judge has rightly held that the petitioners are not necessary and proper parties to the suit.

6. Taking an over all view of the matter, writ petition is devoid of merits and it is rejected. No order as to costs.

{G.S.Kulkarni, J}

Rng

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