

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8961 OF 2016

Chandra Co-op. Housing Society Ltd. .Petitioner

Vs.

Brihanmumbai Mahanagarpalika & anr. .Respondents

Mr.R.A.Shaikh a/w. Mr.A.H.Singh, Advocate, for the Petitioner

Mr.Pradeep Patil, Advocate, for the Respondent No.1

Mr.Rajesh Singh i/b. Legal Liaisons, Advocate, for the Respondent No.2

CORAM : R.G.KETKAR, J.

DATE : 15.03.2017

P.C.

. Heard Mr.Shaikh, learned counsel for the Petitioner,
Mr.Patil, learned counsel for the Respondent No.1 and Mr.Singh,
learned counsel for the Respondent No.2 at length.

2. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Plaintiff' has challenged the Judgment and Order dated 04.02.2016 passed by the learned Civil Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai in Chamber Summons No.367 of 2015 in L.C.Suit No.3092 of 2014. By that order, the learned trial Judge allowed the Chamber Summons taken

out by Respondent No.2, hereinafter referred to as “Applicant” and directed the Plaintiff to implead the Applicant as Defendant No.2 in the suit and carry out the necessary amendment and supply a copy of amended plaint to the Defendants on or before the next date of hearing.

3. In support of this Petition, Mr. Shaikh strenuously contended that the learned trial Judge has committed serious error in allowing the Chamber Summons. He invited my attention to the decree dated 17.12.1997 passed by the learned Judge, City Civil Court, Bombay in Short Cause Suit No.4886 of 1980. That suit was filed against the Applicant herein. He submitted that the Applicant was held to be a trespasser. He is also not a member of the Plaintiff-Society. In short, he is a total stranger in a suit filed by the Plaintiff against Respondent No.1 – Corporation. He is neither a necessary nor a proper party. If at all, the Applicant, who is residing on the ground floor is complaining about leakage in his premises, he has to initiate appropriate proceedings before the appropriate forum. He also invited my attention to the prayers made in the present suit, wherein the Plaintiff has challenged notice issued by the Corporation under Section 53(1) of the Maharashtra Regional And Town Planning Act, 1966.

4. On the hand, Mr. Singh supported the impugned Order. He invited my attention to the decree passed on 13.12.2001 by this Court in Suit No.2052 of 1980 filed by the Applicant against Altaf Abdul Latif Furniturewala (since deceased) through his legal heirs Defendants No.2(a) to 2(k) and in particular, Clauses 1, 2 & 11. Clauses No.1 & 2 of the Consent Terms dated 13.12.2001 recited that Defendants No.2(a) to 2(k) and Defendant No.14 (Plaintiff-Society herein) agreed that the Applicant (Plaintiff therein) is entitled to continuous use, occupy & joint possession admeasuring 1650 sq. ft. (carpet area) as the exclusive owner thereof. Clause 2 thereof also recited that the Applicant is at liberty to let, sub-let, lease, sale, transfer and dispose of encumber the said premises prescribed in Annexure 1 in any manner the Plaintiff may deem fit without having any reference of whatsoever nature to the Defendants 2(a) to 2(k) and Defendant No.14. He submitted that Clauses 3 to 10 cast obligations on the Defendants. Clause 11 thereof provided that Defendants No.2(a) to 2(k) and Defendant No.14 after completing the work within a period of week from the date, the Defendants were to obtain the Occupation Certificate in respect of the entire additional work. He submitted that till date, the Defendants have failed to comply the obligations cast on them by Clauses No.3 to 10. He submitted that the Applicant is owner of 1/3rd share in the land and

structure standing thereon. He has also invited my attention to the assertions made in paragraph 1 of the plaint in the present suit. In paragraph 1, the Plaintiff-Society has asserted that the property card issued by the City Survey office in respect of property bearing No. 610 stands in the name of the Applicant herein and said extract of property card is annexed at Exh.A. He, therefore, submitted that the learned trial Judge was justified in passing the impugned Order.

5. He also submitted that aggrieved by the decision passed on 17.12.1997 in S.C.S.No.4886 of 1980, the Applicant instituted F.A.No.192 of 1988 and the Order of the trial Court was stayed. Pending the Appeal as suit instituted by the Applicant, being Suit No.2052 of 1980 was compromised on 13.12.2001. In view thereof, Appeal was disposed of.

6. I have considered rival submissions advanced by the learned counsel for the parties. I have also perused the material on record. The short question is whether the Applicant can be termed as either a necessary or a proper party. In the case of *M/s. Aliji Momonji & Co. Vs. Lalji Mavji & Ors., JT 1996(7) 53*, the Apex Court has observed thus :-

“The landlord has a direct and substantial interest in the demised building before the demolition of which notice under Section 351 was issued. In the event of its demolition, his rights would materially be affected. His right, title and interest in the property demised to the tenant or licences would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent of the landlord or the lessor. But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those circumstances, the landlord necessarily is a proper party, though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from the demolition of the building.”

7. In the present case, a perusal of paragraph 1 of the plaint itself shows that in the extract of property card annexed at Exh.A to the plaint, name of the Applicant appears. That apart, a perusal of the Consent Terms dated 13.12.2001 also prima facie shows that the Plaintiff is the owner to the extent of 1/3rd share in the land and structure. A perusal of the plaint also reveals that certain allegations are made by the Plaintiff against the Applicant. In view thereof, it cannot be said that the Applicant is not a proper party. For the reasons recorded in the impugned Order, I do not find any case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the

Petition fails and same is dismissed.

8. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proceedings as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)