

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14284 OF 2016

Mr. Hemant R. Shah & Another .. Petitioners.
v/s.
Mr. Pramod R. Shah & Another .. Respondents.

Mr. S. Shamim i/b. Shamim & Co., for the Petitioners.
Ms. Usha Purohit i/b. Rajesh Mirchandani, for Respondent No.2.

CORAM: M.S.SANKLECHA, J.
DATE : 7th AUGUST, 2017.

P.C:-

By consent of the parties, Petition is disposed of finally at the stage of admission.

2 This Petition under Article 227 of the Constitution of India, challenges the order dated 16th September, 2016 passed by the City Civil Court, Bombay. The impugned order dated 16th September 2016 allowed the Chamber Summons taken out by Respondent No.2, to be added as Party-Defendant in a suit filed by the Petitioner against his brother-Respondent No.1, seeking to restrain him from taking possession of the suit premises by an order of injunction.

3 It is the case of Respondent No.2 before the City Civil Court that Respondent No.1 had executed a tenancy agreement dated 9th January, 2015 in respect of suit premises in his favour at a consideration of monthly rent of Rs.495/-. The suit premises were thereafter given by him on leave and licence agreement to one Mr. Mohanbhai B. Chauhan to

which Respondent No.1 was also a confirming party.

4 On the other hand, the case of the Petitioner before the City Civil Court was that Respondent Nos.1 and 2 are colluding so as to deprive the Petitioner of the suit premises.

5 Mr. Shamim, learned Counsel appearing for the Petitioner submits that the suit as filed by the Petitioner is against his brother – Respondent No.1. Respondent No.2 claims to have obtained interest in the suit premises by virtue of tenancy agreement which, admittedly, is not registered. Thus, he can have no interest in the suit property so as to be made as a party to the proceedings. Therefore, this Court should exercise its extra-ordinary jurisdiction and set aside the impugned order dated 16th September, 2016.

6 I find that the suit as filed by the Petitioner, seeks to restrain the Respondent No.1 by a perpetual order and injunction from taking possession of suit property either by himself or by any other person, claiming thereunder. Respondent No.2 is claiming interest in the suit property by virtue of tenancy agreement entered into by him with Respondent No.1. Therefore, Respondent No.2 thus, became a necessary party. Further, the impugned order dated 16th September, 2016 on perusal of the record concluded that Respondent No.2 had an interest in the suit premises and the contention of the Petitioner that the Respondent No.1 was colluding with this brother – Respondent No.1 to deprive Petitioner of his property is an issue which can be decided during the trial. Further, the validity of the claim made by Respondent No.2 is a subject matter of trial and the amendment cannot be rejected at the threshold.

7 Be that as it may, at the stage of allowing the amendment, one has to ascertain whether it brings out the real controversy between the parties and is necessary to avoid multiplicity of proceedings. The sustainability of the amendment is not to be considered at the time of allowing the amendment.

8 In the above view, I see no reason to interfere with the impugned order dated 16th September, 2016 passed by the City Civil Court, Bombay in exercise of my jurisdiction under Article 227 of the Constitution of India.

9 Accordingly, **Petition** is **dismissed**. No order as to costs.

(M.S.SANKLECHA,J.)