

sg

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11877 OF 2017

Rafat Sharif Azan

...Petitioner

vs

Tamiz Begum Gulam Dastagir Shaikh And Ors.

...Respondents

.....

Mr. Javed Akhtar Khan, for the Petitioner.

Mr. P.G. Karande, i/b. Mr. S.S. Redekar, for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATED: 02 NOVEMBER 2017

P.C.:

. Heard learned Counsel for the parties.

2. The writ petition challenges an order passed by the City Civil Court at Bombay on the Petitioner's Chamber Summons. The Chamber Summons was taken out in a suit, which was originally filed in this Court and later on transferred to the City Civil Court. The suit is for specific performance of an agreement for sale entered into between Respondent No.1(Original Plaintiff) and Defendant Nos. 1 to 11 to the suit, who are builders and developers. Defendant No.12, who is the ex-husband of the original Plaintiff, was joined as a necessary party to the suit. There appear to be *inter se* disputes between the original Plaintiff and Defendant No.12. The Chamber Summons of the present Petitioner was on the footing that the Petitioner has been residing in the suit premises

as a member of the family of the original Plaintiff. She relied on documents showing her possession and use of the suit premises along with the other family members. As an occupant of the suit premises, the Petitioner claims to be a proper and necessary party to be joined as Defendant No.13 to the suit. By the impugned order, the City Civil Court rejected the Petitioner's application on the ground that the Petitioner has not shown any right to relief arising out of any act or transaction or series of acts or transactions covered by the present suit and that her joinder was not necessary as effective decree could very well be passed in her absence.

3. The reasoning of the Trial Court does not suffer from any infirmity. In a specific performance suit, the applicant must show that he has any right to relief against any party to the suit in respect of the controversy involved in the proceeding or that no decree could be passed in the absence of the applicant. The learned Judge has correctly complied the law laid down in the case of **Kasturi vs. Iyyamperumal**¹, and no exception can be taken to the same. The Petitioner merely claims as a member of the family of the owner and has no independent right to assert in the suit. There is, accordingly, no case for her joinder as a party Defendant.

4. There is, in the premises, no merit in the writ petition. The writ petition is dismissed. No order as to costs.

5. Learned Counsel for the Petitioner states that the Petitioner

¹ AIR 2005 SC 2813

be given some time to vacate the suit premises. The Trial Court has appointed a receiver in respect of the suit flat and the original Plaintiff is appointed as an agent of the Court Receiver. Learned Counsel submits that his client shall undertake to vacate the premises if some time is given to her. The Receiver is, accordingly, directed not to take possession of the suit flat for a period of three weeks from today. Learned Counsel for the Petitioner, who is present in Court, on instructions, undertakes that the Petitioner and her family members shall quit, vacate and deliver possession of the suit flat to the Court Receiver at the end of three weeks. The undertaking is accepted.

(S.C. GUPTE, J.)