

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

WRIT PETITION No.6105 OF 2018

Waman Vishnu Chavan
since deceased, through:

1A) Sandeep Waman Chavan & Ors.

... Petitioners

Vs.

Municipal Corporation of Greater Mumbai

... Respondent

Mr.L.R. Odhekar for the Petitioners

Mr.Pradeep Patil for the Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 4, 2018**

P.C. :

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.
2. This petition pertains to order dated 8.3.2018 passed by the Bombay City Civil Court, Greater Mumbai, thereby dismissing the Chamber Summons No.1397 of 2016 for amendment in L.C. Suit No.9777 of 1989. The plaintiff has filed the suit for declaration and perpetual injunction in respect of issuance of notice under section 351 of the Mumbai Municipal Corporation Act, against the Municipal Corporation. It is the case of the petitioner/plaintiff that

during the pendency of the suit, when the injunction order was granted in his favour in respect of the suit premises, some portion of the suit premises, admeasuring 156 sq.ft. was demolished by the Corporation on the ground of road widening in 2008. However, the road widening has not taken place till today. He, therefore, moved the City Civil Court as also the High Court in different proceedings seeking orders that the Corporation be directed to reconstruct the said premises of 156 sq.ft. However, orders were passed by the High Court in those proceedings that such orders cannot be passed and the issue can be decided at the time of final hearing of the suit. The learned Counsel submits that from 2008 till 2016, he was prosecuting and agitating the same issue before various fora and thereafter, he took out a Chamber Summons for amendment of the plaint to enable him to lead evidence in respect of the subsequent events at the time of tendering evidence before the trial Court. However, the said Chamber Summons was rejected and hence, this petition.

3. The learned Counsel submits that unless there is an amendment in the plaint, he will not be allowed to lead evidence of the subsequent events.

4. The learned Counsel for the Corporation opposes the application and submits that the suit is pending since 1989 and at the time of recording of evidence, this Chamber Summons is taken out with a view to protract the trial.

5. Heard submissions, read the plaint and the orders passed by this Court. As per the case of the plaintiff, the demolition of construction of 156 sq.ft. has taken place during the pendency of the injunction and is a subsequent event. In the plaint, the suit premises is described as 400 sq.ft. The plaintiff can lead evidence in respect of 400 sq.ft. as his suit property. Even the evidence on subsequent events can also be tendered as there are orders in other proceedings related to the portion of the suit property.

6. In view of this, there is no need to allow the Chamber Summons. The impugned order is not to be interfered with. Petition is dismissed with following order:

ORDER

- i) The impugned order is maintained.
- ii) Without amendment of the plaint, the plaintiff is allowed to lead evidence in respect of the suit property of 400 sq.ft.

as described in the plaint and also subsequent events pertaining to the suit property or the portion of the property.

7. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)