

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

WRIT PETITION NO.6425 OF 2018

M/s.Suruchi Saree .. Petitioner
Vs.
Assistant Municipal Commissioner & Anr. .. Respondents

Mr.Amogh Singh i/by Mr.D.P. Singh for the petitioner.
Mr.P.J.Thorat i/by Mr.Jay Bhatia for the respondents.

**CORAM : R.D. DHANUKA, J.
DATE : 14th September 2018**

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 23rd March 2018 passed by the learned Ad-hoc Judge, City Civil Court, Mumbai dismissing the Chamber Summons No.2013 of 2016 filed by the petitioner (original plaintiff) inter alia praying for deleting the name of the respondent no.2 (original defendant no.2) in a suit filed by the petitioner inter alia challenging the notice issued by the Municipal Corporation at Greater Mumbai under Section 351 of the Mumbai Municipal Corporation Act, 1888.

2. It is not in dispute that the chamber summons bearing No.880 of 2013 was filed by the respondent no.2 seeking impleadment as party defendant no.2 in the suit filed by the petitioner. The learned trial Judge passed an order dated 5th November 2014 thereby allowing the said chamber summons seeking impleadment of the respondent no.2

as party defendant no.2. The said order has been implemented by the petitioner.

3. Mr.Singh, learned counsel for the petitioner invited my attention to the prayer clauses in the suit inter alia praying for declaration that the petitioner herein has illegally encroached upon and usurped the portion of the land and for seeking vacant and peaceful possession of the suit property to the respondent no.2. He submits that by judgment and decree dated 23rd March 2016, the learned trial Judge has dismissed the said suit on the ground of limitation.

4. It is submitted by the learned counsel that since the said suit for declaration filed by the respondent no.2 against the petitioner has been dismissed, the learned trial Judge ought to have deleted the name of the respondent no.2 from the cause title of the plaint filed by the petitioner.

5. Mr.Thorat, learned counsel for the respondent no.2 opposed this petition on the ground that the petitioner has not impugned the earlier order passed by the learned trial Judge on 5th November 2014 allowing the chamber summons bearing No.880 of 2013. He submits that the petitioner had not applied for recall of the said order dated 5th November 2014 but had filed a chamber summons for deletion of the name of his client from the cause title of the plaint.

6. It is not in dispute that the petitioner has implemented the order dated 5th November 2014 by impleading the respondent no.2 as party defendant no.2. Merely because the suit filed by the respondent

no.2 on the ground that the encroachment was carried out by the petitioner is dismissed, in my view, the petitioner could not have applied for deletion of the name of the respondent no.2 in the arena of the suit (L.C. Suit No.20150 of 2013).

6. In my view, the order dated 5th November 2014 passed by the City Civil Court has attained finality. There is thus no merit in the writ petition filed by the petitioner. Writ petition is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.