

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7123 OF 2018

Deju Somaya Salian

..... Petitioner

VERSUS

**The Municipal Corporation of Gr.Mumbai
& Ors.**

..... Respondents

Mr.Bholaprasad S. Shukla for the Petitioner.

Mr.G.O.Giri for the Respondent no.1.

Mr.Pradip R. Kadam for the Respondent no.3.

CORAM : R.D. DHANUKA, J.

DATE : 24th SEPTEMBER, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 6th June, 2018 passed by the learned trial judge allowing the Chamber Summons No.1370 of 2017 filed by the respondent no.3 under Order 1 Rule 10 of the Code of Civil Procedure, 1908 *inter alia* praying for the amendment to the plaint.

2. Admittedly, the suit was filed by the petitioner *inter alia* impugning the notice dated 18th May, 2017 issued by the respondent no.1 under section 354A of the Mumbai Municipal Corporation Act, 1888. The petitioner claims to be the tenant in respect of the said structure. The respondent no.3 filed an application *inter alia* praying for impleadment in the suit on the ground that the respondent no.3 is

one of the co-owner of the said property. The said application for impleadment has been allowed by the learned trial judge.

3. Learned counsel for the respondent no.3 placed reliance on the judgment of Supreme Court in case of ***Aliji Momonji & Co. vs. Lalji Mavji and others, (1996) 5 SCC 379*** in support of the submission that in a suit impugning the notice under section 351 of the Mumbai Municipal Corporation Act, the landlord would be a necessary party. Learned counsel for the petitioner on the other hand placed reliance on the latest judgment of Supreme Court in case of ***Mohamed Hussain Gulam Ali Shariffi vs. Municipal Corporation of Greater Bombay & Ors., 2017(6) ALL M.R.420 (S.C.)*** in support of the submission that in the plaint impugning the notice issued by the Municipal Corporation under section 351 of the Mumbai Municipal Corporation Act, a party who claims ownership in respect of the suit property is not a necessary party.

4. The respondent no.3 has already filed a separate suit for seeking partition of the property including the suit property herein. In the later judgment of the Hon'ble Supreme Court in case of ***Mohamed Hussain Gulam Ali Shariffi*** (supra) it is held that the plaintiff being a dominus litis cannot be forced to add any person as party to his suit unless it is held keeping in view the pleadings and the relief claimed therein that a person sought to be added as party is a necessary party and without his presence neither the suit can be proceeded with and nor the relief can be granted. It is only then such person can be allowed to become party, else the suit will have to be dismissed for non-impledment of such

necessary party.

5. It is not the case of the petitioner (original plaintiff) in the plaint that the respondent no.3 is neither a landlord nor the actual occupant of the suit property. The reliefs claimed in the suit filed by the petitioner is only for challenging the validity of the notice issued by the respondent no.1 under section 354A of the Mumbai Municipal Corporation Act. I am respectfully bound by the later judgment of the Supreme Court in case of ***Mohamed Hussain Gulam Ali Shariffi*** (supra). The impugned order passed by the learned trial judge is contrary to the principles of law laid down by the Supreme Court in case of ***Mohamed Hussain Gulam Ali Shariffi*** (supra) and thus deserves to be set aside. I, therefore, pass the following order :-

6. Impugned order dated 6th June, 2018 passed by the learned trial judge in Chamber Summons No.1370 of 2017 is quashed and set aside. Chamber Summons No.1370 of 2017 is dismissed. Writ petition is allowed in the aforesaid terms. There shall be no order as to costs.

7. It is made clear that this court has not expressed any views as to whether the respondent no.3 or the petitioner herein has any right, title or interest in the suit property or not and the same shall be decided in the appropriate proceedings.

[R.D. DHANUKA, J.]