

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LDG.) NO. 260 OF 2018

Mohammed Hanif Sharif Khan. ... Appellant.
V/s.
Kamla Marya Bari and others. ... Respondents.

Mr.M.P.Mishra for the appellant.

Mr.Sanjiv Sawant with Mr.Sameer Suryawanshi i/b.
Mr.Himanshu Kode for respondent Nos.1 to 6.

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CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 27th August 2018.

P.C.:

Heard the learned counsel appearing for the appellant. The appellant is the original defendant No.3 and the first to sixth respondents are the original plaintiffs. By the impugned judgment and order dated 9th April 2018, the learned single Judge has allowed the chamber summons taken out by the original plaintiffs for grant of leave to amend in a suit filed in the year 2018. While allowing the chamber summons for amendment taken out by the original plaintiffs, all contentions of the present appellant/ original third defendant have been kept open which will include the contentions that the suit is barred by limitation and that the suit is not maintainable.

2. The learned counsel appearing for the appellant submitted that suit filed by the first plaintiff in the City Civil Court at Mumbai was sought to be withdrawn. In fact, permission was sought of the City Civil Court by making an application to withdraw the suit with liberty to file a fresh suit. The said application was rejected by the learned Judge of the City Civil Court vide order dated 5th December 2017. His submission is that the said order has been challenged by the first respondent herein by filing a writ petition which is pending before the learned single Judge. He invited our attention to the order dated 25th June 2018 passed by a Division Bench of this Court.

3. We have considered the submissions. As stated earlier, the suit subject matter of the present appeal has been filed in the year 2018. Chamber summons was taken out in March 2018. It is pointed out in the amendment that the first respondent filed a suit in the City Civil Court in which, on 16th September 2016 a copy of lease deed of November 1984 was produced. One of the amendments prayed for is for seeking a declaration that the lease-deed of November 1984 is bogus and fabricated document and void *ab initio*. The learned single Judge observed that though the present suit may be a suit for injunction, by incorporating additional averments and additional prayers, the nature of the suit will not undergo any change. The learned single Judge observed that if after carrying out amendment this Court ceases to have jurisdiction, the Court can pass appropriate order. Even the issue of limitation and issue of maintainability remain open notwithstanding the impugned order.

4. No case is made out to interfere with the impugned order by which amendment of plaint has been permitted. Appeal is, accordingly, dismissed. In view of dismissal of appeal, pending notices of motion/ chamber summonses, do not survive and stand disposed of accordingly.

(M.S.SONAK, J.)

(A.S.OKA, J.)