

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.788/2019

Premram Kesaram Choudhary ... Petitioner

V/s.

Pushpaben Purhottam Tank & Ors. ... Respondents

Mr. N. G. Samant I/b. Sandeep Mahadik for the Petitioner
Mr. Shashikant P. chaudhari a/w. Mrs. Snhal S. Chaudhari, Mr.
Pranot Pawar I/b. Maharashtra Law Associates for Respondent
No.1.
Mr. Mehul Rathod I/b. M/s. KS Legal for Respondent No.3

CORAM: K.K. TATED, J.

DATED : JANUARY 30, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India, the Petitioner - Plaintiff challenges the order dated 10.12.2018 passed by the 1st Additional Principal Judge, City Civil Court, Dindoshi, Mumbai in Chamber Summons No.09/2017 in S.C.Suit No.1323/2014 allowing third party Application for joining them as party Defendant in the suit.

2 The learned counsel for the Petitioner - Plaintiff submits that the Petitioner has filed the Short Cause Suit No. 1323/2014 in the Bombay City Civil Court, Mumbai against the Defendants i.e. Respondent Nos.2 and 3 not to disturb his possession in respect of the suit premises i.e. old room No.25 and new Room No.25, 25-A and 25-B, Pushpabai Chawl, Sandesh Colony, Orlem

Church Road, Malad (W), Mumbai - 400 064, without following due process of law.

3 The learned counsel for the Petitioner submits that Respondent No.2 - Defendant No.1 is erstwhile owner of the suit premises. He submits that Respondent Nos.3 - Defendant No.2 wants to evict the Petitioner forcibly from the suit premises, hence, he has added him as party. The learned counsel for the Petitioner submits that the Petitioner made a prayer in the suit i.e. not to disturb his possession without following due process of law. Therefore, in such type of suits, there is no question of adding Respondent No.1 - owner of the suit premises as Defendant. Therefore, the impugned order passed by the Trial Court is liable to be set aside.

4 On the other hand, the learned counsel for the Respondent Nos.1 - Applicant has vehemently opposed the Writ Petition. He submits that in the present proceedings Respondent No.1 - Applicant is a lessee of the original owner/landlord in respect of the suit plot of land bearing CTS No.8/7 of village Goregaon, Mumbai. He submits that being owner of the suit premises, he is a necessary party before deciding any issue either between the Plaintiff and/or original Defendant and/or against the proposed Defendant. These facts are considered by the Trial Court while passing the impugned order dated 10.12.2018. Hence, there is no question of entertaining the Writ Petition. Same is liable to be dismissed with costs.

5 It is to be noted that in the present proceedings the Petitioner - Plaintiff has filed the suit against Respondent Nos.2 and 3 - Defendants not to disturb his possession in respect of the suit room without following due process of law. In fact, the said room is situated on the land belonging to the third party. Therefore, if any order is passed, that would affect the right, title and interest of the proposed Defendant. Hence, I do not find any substance in the Writ Petition.

6 Hence, the following order is passed:

a The Writ Petition stands dismissed.

b At the request of the learned counsel for the Petitioner, time to carry out amendment in the plaint as per order dated 10.12.2018 passed by the Bombay City Civil Court, Mumbai in Chamber Summons No.9/2017 in S.C.Suit No.1323/2014 is extended till 15.02.2019.

(K. K. TATED, J.)