

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5665 OF 2014

Vraj Giriraj Co.Op.Hsg. Society Ltd. ...Petitioner
vs.
Ashok Raghunath Rokade and Anr. ...Respondents

Mr. S.N. Vaishnav a/w. Ms. Nupur Mukherjee I/b. M/s. N.N.
Vaishnawa & Co., for the Petitioner.
Mr. P.D. Patil, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : APRIL 16, 2019

JUDGMENT

. Heard Mr. Vaishnav, learned counsel for the Petitioner and
Mr. Patil, learned counsel for the Respondents.

2. Rule. Rule made returnable with consent of and at the
request of learned counsel for the parties.

3. The challenge in this Petition is to the order dated 26th
March, 2014 by which the learned trial Judge has dismissed the
Petitioner's Chamber Summons No. 540 of 2012 seeking
impleadment in the Long Cause Suit No. 1130 of 2012 instituted
by the Respondents against the Municipal Corporation for Greater
Mumbai (MCGM).

4. Mr. Vaishnav, learned counsel for the Petitioner submits that the Petitioner has been accepted as the owner of the suit property in which the suit premises are allotted. In fact the Petitioner has instituted the suit seeking mandatory injunction to demolish the illegal construction carried out by Respondent No. 1. This suit was decreed and the direction were issued to MCGM to take action against the illegal construction. It is in pursuance of such decree, notice under section 351 of MMC Act came to be issued to the Respondents. This notice is the subject matter of challenge in the Long Cause Suit No. 1130 of 2012. One of the ground raised in the suit by the Respondents is that the owner of the premises was not served with notice by the MCGM. Mr. Vaishnav submits that any of these circumstances, the Petitioner herein was necessary party to the suit and the learned trial Judge clearly erred in rejecting the Petitioner's Chamber Summons.

5. Mr. P.D. Patil, learned counsel for Respondent No. 1 submits that the challenge in this suit is to the notice issued by the MCGM, therefore the Petitioner is neither a necessary nor a proper party to the suit. He points out that the Respondents have nowhere admitted that the Petitioner has been a landlord or even the owner

of the suit premises. He submits that there are parallel proceeding pending on this issue and therefore there is no infirmity in the view taken by the trial Court.

6. Though the MCGM is served, there is no appearance on behalf of MCGM. Mr. Vaishnav points out that before the trial Court, MCGM has not opposed the Petitioner's Chamber Summons seeking impleadment.

7. The rival contentions now fall for determination.

8. In this case, the record indicates that the Petitioner – Cooperative Society had instituted Long Cause Suit No. 1130 of 2012 against the Respondents seeking mandatory injunction in respect of certain construction undertaken by Respondent No. 1. This suit was partly decreed on 29th January, 2011. The direction issued by the Court is to the effect that Respondent No. 1 herein had unauthorizedly covered backside of suit property by a shed of AC sheet.

9. Based upon the complaint of the Petitioner as well as the

decree dated 29th January, 2011, the MCGM has issued notice under section 351 of MMC Act to the Respondents which is the subject matter of challenge in Long Cause Suit No. 1130 of 2012. In the suit one of the ground raised by the Respondents is that no notice was issued to the owner of the suit premises and therefore notice under Section 351 is vitiated. From the meaningful reading of the Complaint, it is apparent that the Respondents have accepted the society as having rights to the building and consequently gives rights to the suit premises. Besides, the Respondents, have nowhere challenged the decree dated 29th January, 2011 in Long Cause Suit No. 2263 of 2002 which was instituted by the Petitioner against Respondent No. 1. From all this, it is quite clear that the Petitioner has specific interest in the issue raised in Long Cause Suit No. 1130 of 2012.

10. Learned trial Judge therefore seriously erred in dismissing the Petitioner's Chamber Summons for impleadment. In fact, the view taken by the learned trial Judge runs contrary to the view taken by this Court in ***Ranjitsingh Linga & Anr. vs. Municipal Corporation of Greater Mumbai & Anr, 2010(2) ALL MR 537.*** The view is also contrary to the decision of the Supreme Court in

M/s. Aliji Monoji & Co. vs. Lalji Mavji & Ors., AIR 1997

Supreme Court, 64. In all these cases, it is ruled that the landlord/owner of the suit premises is appropriate party in suit of this nature. However, it is clarified that merely because the Chamber Summons taken up by the Petitioner is liable to be allowed, this does not mean that this Court has exclusively determined on the status of the Petitioner, since it is pointed that from parallel proceeding pending between the Petitioner & Respondents in regard to their precise statues of Petitioner qua suit premises. Material on record is however sufficient to allow the Petitioner to be impleaded as Defendant in Suit No. 1130 of 2012 as well as in Notice of Motion which is pending the suit.

11. Accordingly, the impugned order dated 26th March, 2014 is set aside.

12. The Chamber Summons No. 540 of 2012 taken out by the Petitioner is allowed.

13. The Respondents to carry out the necessary amendment within four weeks from today.

14. Rule is made absolute in the aforesaid terms.

15. There shall be no order as to costs.

16. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)