

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

WRIT PETITION NO.8498 OF 2017

Mr.Dashrath Mahadeo Bhagat ... Petitioner
V/s.
The Municipal Corporation for
Greater Mumbai and ors. ... Respondents

Mr.H.T.Pawar, Advocate for the Petitioner.
Mr.Vinod Mahadik with Mr.Santosh Parad, Advocate for
Respondent No.1(MCGM).
Mr.Hasanuddin S. Ansari, Advocate for Respondent No.4.

**CORAM : UJJAL BHUYAN, J.
DATE : DECEMBER 09, 2019.**

P.C.:-

1. Heard Mr.H.T.Pawar, learned counsel for the petitioner; Mr.Santosh Parad, learned counsel for respondent No.1; and Mr.Hasanuddin S. Ansari, learned counsel for respondent No.4.
2. None has appeared for respondent Nos.2 and 3, though served.
3. By filing this petition under Article 227 of the Constitution of India, petitioner seeks quashing of order

dated 11th June, 2015 passed by the learned Ad-hoc Civil Judge, City Civil and Sessions Court, Borivali Division, at Dindoshi, Mumbai in Chamber Summons No.25 of 2014 arising out of L.C. Suit No.2479 of 2010.

4. It may be mentioned that petitioner and respondent No.4 are brothers. Respondent No.4 as the original plaintiff has instituted L.C.Suit No.2479 of 2010 before the City Civil Court at Dindoshi contending that defendant Nos.1 and 2 had illegally encroached upon ancestral property of the plaintiff and had raised unauthorized construction. Defendant Nos.1 and 2 have been arrayed as respondent Nos.2 and 3 in the present proceeding.

5. Petitioner as the applicant filed chamber summons which was registered as chamber summons No.25 of 2014 stating that he was also owner of the ancestral property like the plaintiff. Therefore, he has a common interest in the suit property and should be arrayed as plaintiff No.2. This was objected to by defendant No.1 by filing affidavit. Objection was that applicant did not

furnish sufficient reasons as to why he was not joined as a plaintiff at the time of filing of the suit.

6. By the impugned order dated 11th June, 2015, learned Ad-hoc Civil Judge dismissed the chamber summons.

7. Aggrieved, present writ petition has been filed.

8. At this stage, it may be mentioned that applicant had mentioned in his chamber summons that at the time of institution of the suit, he was not present at Mumbai. Therefore, he could not be joined as a co-plaintiff.

9. Learned Ad-hoc Civil Judge did not accept the contention of the applicant i.e., the petitioner by taking the view that petitioner did not mention where he had gone, if he indeed had gone out of Mumbai. He further observed that the suit was instituted in the year 2010, whereas the chamber summons was filed in the year 2014. On these two grounds, the chamber summons was rejected.

10. This court by order dated 18th April, 2019 had issued notice and directed the petitioner to ensure presence of respondent No.4 before the court either in-person or

through his Lawyer to respond to the contention of the petitioner, since respondent No.4 is stated to be the brother of the petitioner.

11. On the next date i.e. on 25th April, 2019, respondent No.4 appeared before this court in person alongwith his Lawyer. He stated that he had no objection to the petitioner being impleaded as a co-plaintiff in the suit.

12. Today also learned counsel representing respondent No.4/ original plaintiff has submitted before the court that he has no objection to joining the petitioner as a co-plaintiff in the related suit.

13. Learned counsel representing respondent No.1 i.e. Municipal Corporation of Greater Mumbai also submits that he has no objection to the prayer of the petitioner for being added as co-plaintiff in the related suit.

14. A perusal of Order 1 Rule 1 of the Code of Civil Procedure would go to show that it is basically for the plaintiff to join any person as a co-plaintiff. Ultimately, it is the plaintiff who will have to pursue the suit. When the plaintiff says that he has no objection to his brother being joined as a co-plaintiff and the interest of the two

brother vis-a-vis subject matter of the suit being identical, court sees no impediment in the joinder of the petitioner i.e. applicant as a co-plaintiff in the related suit. Grounds given by learned Ad-hoc Civil Judge in rejecting the application of the petitioner for joining as co-plaintiff are found to be not at all germane, so also objection of defendant No.1.

15. In this connection, a decision of this court in **Shripati Pandu Kamble Vs. Bhau Ganpati Kamble** reported in **1978 Mh.L.J. 345** and that of the Supreme Court in the case of **Rajesh Kumar Aggarwal Vs. K.K.Modi** relating to amendment of pleadings reported in **2006(4) Mh.L.J. 719** may be usefully referred to.

16. On a thorough consideration of the matter, impugned order dated 11th June, 2015 cannot be sustained and is accordingly set aside.

17. Petitioner shall be joined as plaintiff No.2 in L.C. Suit No.2479 of 2010, whereafter the suit shall proceed in accordance with law.

18. Writ petition is disposed of.

(UJJAL BHUYAN, J.)