

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

APPEAL FROM ORDER NO.179 OF 2019

Prabhu Devandas Chauhan ... Appellant
Versus
Jatin Jagmohan Shah and Anr. ... Respondents

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Mr. Jamshed Ansari for Appellant.
Mrs. Madhuri More for MCGM/Respondent No.2.

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CORAM : M. S. KARNIK, J.
DATE : 7th JUNE, 2019.

P. C.:

1. Heard learned counsel for the appellant.
2. The appellant has challenged an order dated 25.07.2016 passed by the Judge, City Civil Court at Dindoshi, Mumbai dismissing the Chamber Summons No.72 of 2014 which was taken out by the appellant for impleading him as a party.
3. According to learned counsel for the appellant, the appellant is a necessary party to the Suit. He would submit that illegal construction was carried out by the original plaintiff adjacent to where the appellant is residing. It is based on the complaint made by the appellant the Corporation initiated action and notice under Section 351 was issued. The respondent has challenged this notice by way of the Suit and obtained an injunction.

4. Learned counsel for the appellant would submit that the said injunction has been obtained by misleading the trial Court. He would further submit that he is necessary party as the illegal construction has taken place right to next his property. He would further states that based on his complaint an action has been initiated by the Corporation.

5. I have gone through the order passed by the Trial Court. The trial Court is of the opinion that the appellant is not a necessary party. The trial Court has recorded that based on the complaint made by the appellant, action has been initiated by the Corporation by issuing notice under Section 351 of the Mumbai Municipal Corporation Act. In the opinion of the trial Court, the appellant is neither a necessary nor a proper party. The appellant is not claiming any title or right over the suit property or premises nor has alleged that because of the alleged construction of the plaintiff, his rights in respect of use of his own property is affected. For all these reasons the Chamber Summons taken out by the appellant is rejected.

6. I do not see any reason to interfere with the order passed by the Trial Court. Based on the complaint made by the

appellant, action has been initiated by the Corporation by issuing notice under Section 351. The respondent No.1 has filed the suit challenging the notice issued under Section 351. The same is pending. The respondent-Corporation would undoubtedly take appropriate stand before the trial Court justifying the notice issued under Section 351. However the appellant neither has interest in the suit property nor is it that because of alleged construction his own rights are affected. The appellant cannot be regarded necessary or proper party. I find no error in the view taken by the trial Court.

7. Appeal therefore is dismissed.

8. The appellant is always at liberty to institute appropriate proceedings for ventilating his grievance.

(M. S. KARNIK, J.)