

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10970/2013

Mr. Navjeevan Chawl Committee ... Petitioner

V/s.

Sheshnarayan H. Mishra ... Respondent

Mrs. Hemangi D. Pathare for the Petitioner

CORAM: K.K. TATED, J.

DATED : FEBRUARY 27, 2019

P.C. :

1 Heard the learned counsel for the Petitioner. None for the Respondent though duly served.

2 By this petition under Article 227 of the Constitution of India, the Petitioner - Plaintiff challenges the order dated 24.07.2013 passed by the Bombay City Civil Court, Mumbai in Chamber Summons No.99/2010 in Suit NO.953/2011 rejecting the Application made by the Plaintiff for amendment in the plaint.

3 The learned counsel for the Plaintiff submits that in the present proceedings the suit was filed for restraining the Respondent - Defendant from disturbing their possession in respect of Room No.9A in Chawl-D situate at village Dahisar, Tq. Tq. Borivali, Mumbai Suburban District, Mumbai known as Navjinavan Chawl, Ganesh Ngaar, Rawalpada, S.N.Dubey Road,

Dahisar (East), Mumbai - 400 068. She submits that the intention of the Plaintiff was to file the suit for possession. She submits that the Plaintiff has made averments in the plaint that court may appoint court receiver and take forcible possession of the suit premises and hand over to the Plaintiff. She submits that inadvertently it remained on the part of the Plaintiff to make appropriate prayer for possession. She submits that the Plaintiff has made following prayer in the plaint.

“20. The Plaintiff therefore prays that:

a) This Hon'ble Court be pleased to issue permanent order of injunction restraining the Defendant, his servants, and agents from entering the said room and or disturbing the Plaintiff's possession of suit property namely Room No.9A in Chawl-D Navjinavan Chawl, Ganesh Nagar, Rawalpada, S.N.Dubey Road, Dahisar (East), Mumbai - 400 068.

b) Pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to appoint court receiver High Court Bombay or such other person as receiver of the suit property with a direction to broke open the lock put by the Defendant on the suit property and put the Plaintiff in possession of the same till disposal of the suit.

AND/OR ALTERNATIVELY direct the Sr. Inspector of Police Dahisar Police Station to broke open the lock and carry out the inventory of the articles lying inside and thereafter to handover the possession to the Plaintiff of the suit property namely Room No.9A in Chawl-D Navjinavan Chawl, Ganesh Nagar, Rawalpada, S.N.Dubey Road, Dahisar (East), Mumbai - 400 068.

c) Interim and ad-interim reliefs in terms of prayer (b) above be granted.

d) For cost of this suit.

e) Such other and general reliefs which this Hon'ble Court may deem fit and proper."

4 The learned counsel for the Plaintiff submits that as soon as they realized the mistake of not making any prayer for possession of suit property, while filing the suit, they made the Chamber Summons on 26.09.2011 for following amendment in the plaint:

"Para 9A: The Plaintiffs thus state that the Plaintiffs were dispossessed of the suit premises viz. Room No.9A in Chawl-D in Navjinavan Chawl, Ganesh Nagar, Rawalpada, S.N.Dubey Road, Dahisar (East), Mumbai - 400 068 without following due process of law by the Defendants on 14.04.2011 and therefore the Plaintiffs are filing the present suit for recovery of possession from the Defendant of the suit property. The Plaintiffs, therefore, pray that this Hon'ble Court be pleased to order the Defendant to put the Plaintiffs in peaceful use, occupation and possession of the suit property, viz. Room No.9A in Chawl-D in Navjinavan Chawl, Ganesh Nagar, Rawalpada, S.N.Dubey Road, Dahisar (East), Mumbai - 400 068. The Plaintiffs further say and submit that if the order as prayed for is not granted, the Plaintiffs will suffer irreparable loss which cannot be compensated in terms of money. The balance of convenience is in favour of the Plaintiffs."

Prayer BB) - The Hon'ble Court be pleased to order and direct the Defendant, his agents and servants to hand over vacant and peaceful possession of the suit premises to the Plaintiffs, viz. Room No.9A in Chawl-D in Navjinavan Chawl, Ganesh Nagar, Rawalpada, S.N.Dubey Road, Dahisar (East), Mumbai - 400 068."

5 The learned counsel for the Plaintiff submits that, they made averments in para 3 of the affidavit in support of the Chamber Summons, that inadvertently it remained on their part

to make appropriate prayer for recovery of possession. She submits that the Plaintiff is owner of the suit premises. She submits that the Defendant has forcibly taken possession of the same on 14.04.2011. To that effect, the Plaintiff has already filed a complaint with the police authority. Not only that, the police authority has also taken action and issued order u/s.144 of the Cr. P.C. She submits that all these facts are not considered by the Trial Court while deciding the Chamber Summons vide the impugned order.

6 The learned counsel for the Plaintiff submits that the Trial Court has held that the Plaintiff in paragraph 2 and 5 of the plaint has specifically made statements that they are in possession and occupation of the suit premises and hence, their Application for amendment came to be rejected. She submits that unless and until their Application for amendment is allowed, nothing will survive in the present proceedings filed by them. She submits that the Plaintiff's pleading in the suit specifically shows that the intention of the Plaintiff was to file suit not only for injunction but also for possession. She submits that the Plaintiff has specifically made a prayer for appointment of a court receiver and to take forcible possession of the suit premises. On the basis of these submissions, the learned counsel for the Plaintiff submits that this Hon'ble Court be pleased to set aside the impugned order dated 24.07.2013 passed by the court below in the Chamber Summons and permit the Plaintiff to carry out amendment in the suit. She submits that they have good chance of success in the proceedings.

7 Heard the learned counsel for the Petitioner at length. Bare reading of the plaint, particularly prayer clause (b) of the plaint shows that the intention of the Plaintiff was to file the suit for possession of the suit premises. Inadvertently, it remained on their part to make appropriate prayer for the same. These facts were not considered by the Trial Court at the time of passing the impugned order. Hence, I am of the opinion that the Plaintiff has made out a case for allowing the Writ Petition.

8 Hence, the following order is passed:

- a. The impugned order dated 24.07.2013 passed by the Bombay City Civil Court, Mumbai, Borivali Division, Dindoshi Branch, Mumbai in Chamber Summons No.99/2012 in Suit No.953/2011 is set aside.
- b. The Chamber Summons NO.99/2012 filed by the Plaintiff is allowed.
- c. The Plaintiff to carry out appropriate amendment in Suit NO.953/2011 on or before 04.05.2019.
- d. If amendment is carried out within stipulated time as stated hereinabove, the Plaintiff to serve an amended copy of the plaint on the Defendant or their Advocate within four weeks thereafter.
- e. The Bombay City Civil Court, Mumbai is directed to decide the said suit on its own merits after hearing both sides.

- f. The Writ Petition stands disposed of accordingly.
- g. No order as to costs.

(K. K. TATED, J.)