

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

WRIT PETITION NO. 11458 OF 2019

Malwani Savli Co-op. Housing
Society Ltd.,

... Petitioner.

V/s.

Mr. Manish Balkrishna Joshi & Ors.

... Respondents.

Ms. Nayana Pardeshi, Advocate a/w. Mr. Rakesh Pathak
for the Petitioner.

None for Respondents.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 02, 2019.

PC :

1 Heard Ms. Nayana Pardeshi, learned counsel
for the Petitioner.

2 By filing this Petition under Article 227 of the
Constitution of India, Petitioner has assailed legality
and correctness of the order dated 21.08.2019 passed
by the learned Member, Maharashtra State Co-
operative Appellate Court, Mumbai below Exh. 12 in
Appeal No. 101 of 2018.

3 Respondent No.1/original disputant has
lodged a dispute against Petitioner, which is a Co-

operative Housing Society, before the Co-operative Court. Against the order passed by the Co-operative Court in the dispute, Petitioner has preferred an appeal before Maharashtra State Co-operative Appellate Court (Appellate Court), which has been registered as Appeal No. 101 of 2018. Respondent No.1, the original disputant, in the original dispute had not impleaded Respondent No. 3 as party Respondent. However, in the appeal filed by the Petitioner, Respondent No.3 filed an application for intervening in the proceeding, which was marked as Exh. 12.

4 Petitioner filed objection resisting the application filed by Respondent No. 3 and contended that Respondent No. 3 had no *locus-standi* to participate in the appellate proceeding, more so, when it was not party to the original dispute.

5 By the impugned order dated 21.08.2019, the Appellate Court allowed the intervention application and directed the Petitioner to join Respondent No.3 as a party Respondent in the appeal and to carry out necessary amendment in this regard.

6 Aggrieved, present Writ Petition has been filed under Article 227 of the Constitution of India.

7 Having noticed the above, order dated 21.08.2019 may be adverted to, relevant portion of which is extracted hereunder :

“7] The applicant on the basis of the registered agreement dated 26.04.2007 executed between Mr. Manish Balkrishna Joshi and the applicant with regard to shop No. A/3 has claimed that he has acquired interest in the subject matter of the dispute which came to be decided by the Ld. Trial Court. From the averments of the application it shows that he is supporting the judgment passed by the Trial Court, which is under challenged in the instant appeal. The society has challenged the directions given by the Trial Court not to construct compound wall in the area surrounding society area in the South and South West corner of the building which is between two gates in the existing compound wall. The society has come up with contention that as per the amended approved plan and as per the NOC issued by MHADA authority the society has constructed compound wall. The society has challenged legality of the order impugned on facts and on the various grounds inter alia mentioned in the appeal. Those can be taken into consideration at the time of final adjudication of the appeal on merit. Now the only question that arises for adjudication is whether interest of the applicant is really affected because of the judgment and order passed by the Trial Court and whether he has acquired any interest in the property of the disputant which is subject matter of

the dispute and therefore, he is entitled to join as party in the appeal filed by the society.

8] No doubt as per section 94 (3)(a) of the MCS Act, 1960 “a person, whether he be a member of the society or not, if has acquired any interest in the property of a person who is party to the dispute, may join as a party to the dispute”. However, this provision can be made applicable only to the situation when pending dispute if the interest has been acquired in the property which is the subject matter of the dispute. Here in the present case agreement dated 26.04.2007 alleged to be executed between the applicant and Mr.Manish Balkrishna Joshi that too after filing the dispute which came to be filed in the year 2004 so it is apparent that the applicant has acquired interest in the subject matter of the dispute that too pending the dispute therefore, even though he is not member of the society as alleged by the society, as he has acquired interest in the property of the disputant he may join as party to the appeal. Even though in spite of present set of fact it is undisputed that the shop i.e. A/3 purchased by the applicant by executing agreement dated 26.04.2007 is situated on the ground floor of the society and the applicant is in use and occupation of the shop No. A/3. The subject matter of the dispute relates to the compound wall of the society. The applicant is illegally occupied the shop No. A/3 as alleged by the society but from the averments of the application impugned, the applicant claimed that he has purchased the shop no. A/3 and said fact has been informed to the society. He not only

in possession of the suit shop but also he is doing the business there. In this set of fact I am of the considered opinion that the applicant has acquired interest in the property of the disputant and therefore, he may be joined as party in the appeal. Hence, I answer the points accordingly and proceed to pass the following order.

ORDER

- 1] Application at Exh. 12 is allowed.
- 2] Society is directed to join the present applicant as party respondent No. 3 in the appeal and shall carry out necessary amendment within period of One week from this order."

8 Though it is conceded that the Co-operative Court has the competence to join a party to the original dispute but it is contended that the same is not available at the appellate stage. However, court is not inclined to accept the said submission.

9 Appellate Court had applied its mind and after due consideration has allowed Respondent No.3 to be added as a Respondent in the appeal. No prejudice can be said to have been caused to the Petitioner by addition of Respondent No.3 as a Respondent in the appeal. In these circumstances and taking an overall view of the matter, court is not inclined to invoke its jurisdiction under Article 227 of

the Constitution of India to interfere with the aforesaid order.

10 Writ Petition is accordingly dismissed.

(UJJAL BHUYAN, J.)

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