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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12910 OF 2016

Mahadev Creater and Construction LLP ..Petitioner.

V/s.

Kalyan Dombivli Municipal Corporation & Ar. ..Respondents.

Mr.Bhavik Mane with Sameer Pendse I/b. Ashwin V.Ranjane for the petitioner.

Mr.A.S. Rao with Prashant Kamble for respondent No.1.

Mr.Pravin H.Padare for respondent No.2.

CORAM : M.S.SONAK, J.

DATE : APRIL 23, 2019

P.C.:-

Heard Mr.Mane, learned counsel for the petitioner. Mr.Rao, learned counsel for respondent No.1 and Mr.Padare, learned counsel for respondent No.2.

2. Challenge in this petition is to the order dated October 22, 2016 by which learned trial Judge has permitted impleadment of respondent No.2 as defendant in the suit.

3. Mr.Mane, learned counsel for the petitioner submits that respondent No.2 is neither a necessary nor proper party. He submits that learned trial Judge erroneously referred to respondent No.2 as the

owner of the suit property. He submits that in terms of the decision of Hon'ble Supreme Court in *Ramesh Hirachand Kundanmal V/s. Municipal Corporation of Greater Bombay and others*¹ the Court can direct a plaintiff, though a dominus litis to implead a person as a necessary party. He relies on the decision in *Smt.Gautibala Manohar Naik Purulekar w/o. Manohar Naik Parulekar & Ors. V/s. Corporation of Punaji*². He submits that in such a situation, the plaintiff seeks relief of restraint against demolition against the Corporation, no third party can be permitted to intervene. For all these reasons, he seeks that the impugned order warrants interference.

4. Mr.Rao and Mr.Padare, learned counsel for the respondents defend the impugned order on the reasoning reflected therein.

5. According to me, the issue of joining of parties like defendant No.2 depends upon the exercise of discretion. It is true that on the basis of material on record, learned trial Judge should not have gone to the extent of holding that respondent No.2 is owner of the property. That is the matter which was not required to be strictly speaking gone into at this stage or in any case, it was certainly not a case to make any conclusive observations on this issue. However, the material on record does suggest that there was some agreement between the petitioner and respondent No.2 in relation to the suit

1 (1992) 2 SCC 524

2 2010(5) All MR 605

property. The material on record itself suggest that it is respondent No.2 who had filed application with the Municipal Corporation about the illegal constructions and it is pursuant to the said application, the Municipal Corporation initiated action which the petitioner seeks to question by institution of the suit. Learned trial Judge has appreciated the matter in the correct perspective and exercise discretion in a reasonable manner. In fact, the decision of the learned trial Judge was consistent with the view taken by this Court in *Mr.Ranjitsingh Linga & Anr. V/s. The Municipal Corporation of Greater Mumbai & Anr.*³, *Milind Dattatraya Sugavkar V/s.Municipal Corporation of Greater Mumbai & Anr.*⁴ and to certain extent the observations in *M/s. Ajit Monoji & Co. V/s. Mavji and others*⁵. In all these decisions, this Court has considered the decision of the Hon'ble Supreme Court in the case of *Ramesh Hiranchand Kundanmal (supra)*.

6. For all the aforesaid reasons, no case is made out to interfere with the impugned order in exercise of the supervisory jurisdiction under Article 227 of Constitution of India.

7. Accordingly, the petition is dismissed. There shall be no order as to costs.

8. At this stage, learned counsel for the petitioner seeks

3 2010(2) All MR 537

4 2006(1) All MR 488

5 AIR 1997 SC 64

extension of time to carry out the amendment. Time to carry out the amendment is extended by a period of six weeks from today. This also amounts to granting the request made by learned counsel for the petitioner for stay of the order now pronounced.

(M.S.SONAK, J.)