

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 14224 OF 2017

Mohmad Takki Mohammed
Umar Ansari ... Petitioner
Vs.
The Commissioner,
Bhiwandi Nizampur Mun. Corporation
& Anr. ... Respondents

Mr. Kishor Patil a/w Amol P. Mhatre, for the Petitioner
Ms. Shweta Vaidya i/b N. R. Bubna, for the Respondent No. 1.
Mr. Suraj N. Naik i/b R. D. Suryawanshi, for the Respondent
Nos. 2.

CORAM : M. S. SONAK, J.

DATE : MARCH 14, 2019

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Ms. Shweta Vaidya waives notice for Respondent No. 1 and the learned advocate Mr. Suraj Naik waives notice for Respondent No. 2. By consent of parties, petition is taken up for final hearing.

2. Heard Mr. Kishor Patil for the petitioner, Ms. Shweta Vaidya for Respondent No. 1 and Mr. Suraj Naik for the respondent No. 2.

3. The Challenge in this petition is to the order dated 25/10/2017 by which the learned Trial Judge has directed the petitioner to implead the respondent No. 2 as the party defendant No. 2 to the suit.

4. Mr. Patil, learned counsel for the petitioner submits that the petitioner is neither necessary nor proper party to the suit, in which the main relief is to restrain the Municipal Corporation from taking any action against the petitioner's suit structure without taking due recourse to the procedure prescribed in law. Mr. Patil submits that even if it is assumed that the respondent No. 2 notice is issued notice, on the basis of which the Corporation which has to take action of demolition of suit structure, then also respondent No. 2 is neither necessary nor proper party to the suit. Mr. Patil submits that in the present case, there is no material on record which will establish that respondent No. 2 has any concern whatsoever with the suit structure and, therefore, the respondent No.2 cannot even claim that he is the owner of the suit structure. Mr. Patil relied on the judgment in **Mohamed**

Hussain Gulam Ali Shariffi Vs. Municipal Corporation of Greater Bombay & Ors., reported in 2017(6) ALL MR 420 (S.C.)

5. Mr. Suraj Naik, learned counsel for the respondent No.2 submits that, in the present case, the notice of demolition of the suit structure was, in fact, issued against the respondent No.2. He submits that there are documents to show that the respondent No.2 is the owner of the suit structure. He submits that the suit structure is in the dilapidated condition and in case of any mishap, the Corporation will hold the respondent No.2 liable. He, therefore, submits that respondent No.2 is a necessary or in any case proper party to the suit. For all these reasons, Mr. Suraj Naik submits that this petition is liable to be dismissed.

6. These are the rival contentions, which now fall for determination.

7. It is settled position that normally it is the plaintiff, who is *dominus litis* and, therefore, the plaintiff cannot be

forced to implead any parties to his suit, if he does not desire their impleadment. However, this rule does not preclude the Court from exercising discretion under provisions of Order I, Rule 10 of the Civil Procedure Code, 1908 and in a given case, Court can direct impleadment of party, which it is sufficient that the presence of such party would assist the Court in the effective disposal of the suit.

8. In present case, the learned Trial Judge has taken cognizance of the circumstance that the Corporation has issued notice to respondent No.2 in relation to the suit structure alleging that suit structure is in the dilapidated condition. The petitioner, who claims to be owner and in possession of the suit structure, has instituted the suit complaining that any proposed action of demolition by the Corporation without notice to him, is illegal and improper. Accordingly, an issue is bound to arise in the suit as to whether the petitioner is indeed the owner and in possession of the suit structure, and consequently, was required to be heard before the notice was issued by the corporation.

9. It is the case of the Corporation as well as respondent No.2 that proper notice was served upon respondent No. 2 in relation to the suit structure. Thus, it cannot be said that the learned trial Judge has exercised the discretion unreasonably or arbitrarily in directing the petitioner to implead the respondent No.2 in the suit. The Respondent No. 2 is certainly a proper party and if the learned trial Judge finds that the presence of Respondent No. 2 is necessary for effective disposal of the suit, it cannot be said that there is any unreasonableness exercise of discretion.

10. The factual situation in the case of **Mohamed Hussain (*supra*)** was quite different and the Hon'ble Apex Court has held even a complainant on basis of whose complaint the corporation may have issued notice for demolition is not in every case necessary or proper party. Similarly, in the case of **Ramesh M.Shama Kumbhar Vs. Sudhakar Budha Kumbhar**, reported in **2013(3) ALL MR 196**, this Court has held that in a suit for simplicitor

injunction, order passed would bind only the parties to the suit, and the proposed party seeking impleadment to the injunction suit would not be bound the orders passed in the suit.

11. The issue of joinder of parties is not an issue which normally goes to the root of jurisdiction. In this case, it cannot be said that the discretion has been exercised unreasonably or arbitrarily. Accordingly, there is no case made out to interfere with the impugned order.

12. This petition is liable to be dismissed and is accordingly dismissed. There shall be no order as to costs. Rule is discharged.

13. At the request of the learned counsel for the petitioner, the interim relief which was granted earlier is continued for a period of four weeks from today.

Sd/-
(M. S. SONAK, J.)