

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO.605 OF 2018

IN

SUIT NO.86 OF 2017

Bombay Diocesan Trust Association Pvt. Ltd.)....Applicant

IN THE MATTER BETWEEN :

Indian Church Trustees & Ors.)....Plaintiffs

V/s.

Pravin Gavit & Ors.)....Defendants

Mr.Amrut Joshi I/by Nikhil Mishra for plaintiffs.

Ms.Vidhi Thaker I/by Kunal Bhanage for defendants.

Mr.Harinder Toor a/w Ms.Snehal Dukhale for the applicant.

CORAM : K.R.SHRIRAM,J

DATE : 11.3.2019

P.C.:-

1. This Chamber summons is taken out by the applicant for leave to add the applicant either as co-plaintiff or as defendant. The applicant claims to be the owner of the property which plaintiffs are seeking to wrest possession from defendants.

Plaintiffs, through plaintiff no.3, had appointed one Baiju Fulji Gavit as a Bishop. Pursuant to terms of employment, the said Baiju Fulji Gavit was permitted to reside at the Bungalow which is the subject matter of the suit viz.St.John's house, Duxbury Lane, Colaba,

Mumbai-400 002 (the said property). Baiju Fulji Gavit died on 22.8.2016. Defendant no.1 is the son of Baiju Fulji Gavit, defendant no.2 is the wife of defendant no.1 and defendant no.3 is a 3rd party. Defendants have, it is alleged in the plaint, illegally and unlawfully trespassed in the said property. It is stated that Baiju Fulji Gavit had retired on 11.7.2006 and continued to illegally withhold with him possession of the said property and after his death on 22.8.2016 defendants have illegally trespassed/entered into said property and were occupying the said property. Ms.Thaker for defendant states that they have not filed any reply to this Chamber summons.

2. The prayers in the Suit are (a) to declare that defendants are trespassers and in illegal possession of the Church property and/or not entitled to deal with or part with possession of the said property ; (b) for a decree of possession directing defendants to hand over vacant and peaceful possession of the Church property to the plaintiffs and (c) for a permanent injunction restraining defendants from disturbing the possession of plaintiffs in respect of the Church property.

3. The suit has been lodged on 7.10.2016.

4. On 3.5.2018 applicant has lodged the current Chamber summons seeking to be joined as either co-plaintiff or defendant to the

suit. Though lot of things have been said in the affidavit in support and rejoinder and in the written submissions which were submitted to the predecessor of this Court, Mr.Toor restricted his arguments to provisions of order 1 rule 10 of the Code of Civil Procedure 1908 submitting that applicant is a proper and necessary party to the suit.

5 The claim of applicant as proper and necessary party to the suit is on the basis that it is applicant that owns the said property and is entitled to possession of the said property from defendant and not plaintiff. Mr.Toor states that applicant's case also is the same as plaintiff's case, viz., Defendants are trespassers and have to be evicted but possession should be given to applicant. Mr.Toor argued that the title dispute between plaintiff and applicant can also be decided by this Court in this suit and thereby expand the scope of this suit. Mr.Toor relying upon the judgment of the Apex Court in ¹***Pankajbhai Rameshbhai Zalavadiya Vs. Jethabhai Kalabhai Zalavadiya (deceased) through Lrs*** submitted that order 1 rule 10 enables the Court to add any person as a party at any stage of the proceeding if the person whose presence in Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Mr.Toor also submitted that avoidance

¹ (2017) 9 Supreme Court Cases 700

of multiplicity of proceedings is also one of the object of the said provision. Mr.Toor further submitted that the expression “to settle all questions involved” used in order 1 rule 10(2) of the Code, is susceptible to liberal and vide interpretation. Mr.Toor also relied upon the judgment of the Apex Court in ²*Savitri Devi Vs. District Judge, Gorakhpur & Ors.*

6. At the outset, there can be no dispute on the proposition submitted by Mr.Toor. Order 1 rule 10 enables the Court to add any person as a party if the person whose presence in Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. The questions involved in this suit is whether defendants are illegal trespassers in the said property. For this applicants presence is not necessary at all. This is not a suit where plaintiff's title vis-a-vis applicant or defendant is being decided. That will be a separate cause of action between plaintiff and applicant. Mr.Toor submitted that if he was made a defendant, he could file counter claim against plaintiff for title. I am afraid that is not the scheme for filing a counter claim. If applicant claims to be owner of the property, nothing prevented applicant from filing a suit way back in 2006 when the said Baiju Fulji Gavit retired.

² (1999) 2 Supreme Court Cases 577

Nothing prevented applicant from filing a suit after 2016 when Baiju Fulji Gavit died. Nothing prevented applicant also to file suit against plaintiff for title. Mr.Toor submitted that the earlier trustees of applicant have entered into an agreement to develop the property in collusion with plaintiff and thereafter those trustees were removed and Administrator was appointed for applicant. Mr.Toor submitted that there are references to applicant in the plaint and in certain documents annexed to the plaint including an order passed by the Sessions Court in an Anticipatory Bail Application filed by certain parties. Still that will not make the applicant a proper and necessary party to this suit because what the plaintiff is seeking is only possession of the said property from defendants and for a declaration that defendants are illegal trespassers in the said property. Applicant has no role to play in this scenario.

7. In the circumstances, applicant not being necessary party in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in this suit, Chamber summons dismissed with cost in the sum of Rs.50,000/- to be paid to plaintiff by way of cheque drawn in favour of advocate on record for plaintiff.

(K.R.SHRIRAM,J)