

dik

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

**NOTICE OF MOTION (L) NO. 3025 OF 2018
IN
SUIT NO. 471 OF 2016**

Jayashree Ashok Bhatt & Ors.	...Applicants
In the matter between	
Mr Maneesh Bawa & Ors.	...Plaintiffs
VS	
Mr Prasad Arvind Sant & Ors.	...Defendants

.....

Mr Aspi Chinoy, Sr. advocate a/w Mr Vishal Kanade, Mr Aditya Mehta, Ms Nikita Mishra & Ms Sanaea Laskari I/b Rashmikant & Partners for the Plaintiffs
Mr Aniruddha Deo a/w Ms Savita Nangare I/b Atham Legal for the Applicant.
Mr Iqbal Shaikh a/w Mr V.G.Deshmukh for Defendant No.8.

Dhanappa
I. Koshti

Digitally
signed by
Dhanappa I.
Koshti
Date:
2019.07.04
09:59:00
+0530

.....

**CORAM : B. P. COLABAWALLA, J.
JULY 01, 2019.**

P.C. :

This Notice of Motion has been filed by the applicants to be joined as a party – defendants to the present suit. The applicants are 11 in number and claim to be tenants in respect of around 2000 sq. feet of a part of the suit property.

2 The suit in the present case, has been filed by the plaintiffs against defendant Nos. 1 to 8 *inter alia* seeking a declaration that the Consent Terms dated 20th July, 2015 filed in the City Civil

Court at Bombay in Suit No.1553 of 2015, and the Consent Decree passed thereon are non-est, void-ab-initio and null and void, insofar as it relates to the suit property and are not binding upon the plaintiffs. I must mention that the plaintiffs herein were not parties to Suit No. 1553 of 2015 in which the aforesaid consent terms were filed. Thereafter, an order and decree is sought for setting aside those Consent Terms as well as for a money decree against defendant Nos.1 to 8. In this suit, the plaintiffs' also claim a declaration that they are owners of the suit property.

3 The learned advocate appearing on behalf of the applicants submitted that the plaintiffs, and who claim ownership of the suit property, have filed eviction suits against the applicants in the Small Causes Court at Bombay. In those suits, the applicants herein (the defendants therein) have specifically contended that the plaintiffs are not the owners of the portion of the suit property which is in occupation of the applicants and on that basis they contended that the eviction suits are not maintainable at the instance of the plaintiffs. Over and above this, the learned advocate for the applicants submitted that the plaintiffs have played a fraud on this Court by suppressing material documents including a document of the year 1992 which has now surfaced for the first time in the

affidavit-in-reply filed to this Notice of Motion as well as certain revenue entries (annexed to the affidavit-in-rejoinder of the applicants) which clearly shows that it is now the case of the plaintiffs that suit property are nothing but the ancestral properties. For all these reasons, the learned advocate for the applicants submitted that the applicants are a necessary and proper party to the present proceedings, and therefore, ought to be joined as a party – defendants to the present suit.

4 On the other hand, Mr Chinoy, the learned senior counsel appearing on behalf of the plaintiffs opposed this Notice of Motion. Mr Chinoy submitted that the applicants have absolutely no locus to intervene in the present suit. Admittedly, the applicants in the Notice of Motion are not claiming any ownership rights in any part of the suit property, which is the subject matter of the present suit. They are only claiming to be the tenants of a part of the suit property and against whom eviction suits have already been filed by the plaintiffs. Mr Chinoy submitted that the real reason for intervention in this suit is to somehow create hurdles in the way of the plaintiffs to establish their title, so as to ensure that the eviction suits filed by the plaintiffs herein against the applicants, are either delayed or dismissed. He submitted that in the facts of the present case, the real dispute and

the lis lies between the plaintiffs and defendant Nos.1 to 8 where the issue of title of the suit property is in dispute. The tenants have absolutely no role to play in this dispute and hence the applicants are neither necessary nor proper parties. He, therefore, submitted that this Notice of Motion is wholly misconceived, and therefore, be dismissed.

5 The learned advocate appearing on behalf of defendant No.8 supported the arguments canvassed by Mr Chinoy and he too submitted that the applicants herein above are neither necessary nor proper parties to the present suit and hence the Notice of Motion be dismissed.

6 I have heard the learned counsel for parties at length and have perused the papers and proceedings in the present Notice of Motion as well as replies and the rejoinder filed thereto. It is not in dispute that the applicants herein are in no way claiming any title to the suit property. They claim that they are the tenants in respect of a portion of the suit property. I fail to see how the applicants rights are in any way jeopardised in the inter-Se disputes between the plaintiffs and defendant Nos.1 to 8. Whether the plaintiffs succeed or otherwise, the tenancy of the applicants are in no way affect the

present suit. Merely on the assumption that the plaintiffs may fail in this suit, and which would then render the suit filed by them in the Small Causes Court against the applicants would not be maintainable, is no ground to hold that the applicants are necessary or proper parties to the present proceedings. It is always open to the applicants to contend in the eviction suits filed against them that the plaintiffs are not the owners and hence no eviction suits could have been brought by them against the applicants. That is an independent cause of action in the court of Small Causes at Bombay and has nothing to do with the present suit. This being the position, I am clearly of the view that the applicants are neither necessary nor proper parties to the present proceedings.

7 In the view that I take, I am supported by a decision in the case of **Ramesh Hirachand Kundanmal Vs Municipal Corporation of Greater Bombay & Ors {(1992) 2 Supreme Court Cases, 524}**. In the facts of this case, a notice was issued by the Mumbai Municipal Corporation against one of the tenants under Section 351 of the Bombay Municipal Corporation Act for certain alleged unauthorized construction and demolition thereof. The said notice was challenged by the tenant by instituting a suit. In this suit, the landlord sought to intervene. The Supreme Court in these facts found that the landlord's

interest in no way jeopardized and was therefore not a necessary or proper party to the said suit. In this regard, the Supreme Court held that the object of Order I Rule 10 was not to prevent multiplicity of actions though it may incidentally have that effect. However that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved. That would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectively and completely settled unless he is a party. What I have paraphrased above can be found in paragraph 14 of the decision of **Ramesh Hirachand Kundanmal** (supra) which reads thus -

“14. *It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely*

*that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in **Amon Vs. Raphael Tuck & Sons Ltd** {(1956) 1 ALL ER 273 : (1956) 1 QB 357}, wherein after quoting the observations of Wynn-Parry, J. in **Dollfus Mieg et Compagnie S.A. Vs. Bank of England** {(1950) 2 ALL ER 605, 611}, that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:*

“The test is “May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights'.”

8 As mentioned earlier, the applicants' rights of tenancy are in no way affected and neither form the subject matter of the dispute between the plaintiffs and defendant Nos.1 to 8 herein. This being the position, I am clearly of the view that the applicants are neither necessary nor proper parties to the present proceedings.

9 It also appears that the applicants' case of lack of ownership of the plaintiffs' in the portion of the suit property, which is occupied by the applicants, is not on the basis of any facts pleaded

qua the plaintiffs and defendant Nos.1 to 8 inter-Se but wholly on different facts. This is yet another reason why I find that the applicants can never be termed as a necessary or proper parties to the present proceedings.

10 As far as the argument of fraud canvassed by the applicants is concerned, the same is wholly irrelevant to the outcome of the present Notice of Motion. Whether the plaintiffs have in fact played a fraud on this Court, as contended by the applicants, will be considered by this Court as and when the suit goes on trial. This certainly would not give any cause of action to the applicants to join the present suit.

11 It is, however, clarified that nothing in this order shall prevent the applicants from taking whatever contentions that they desire in the suits filed by the plaintiffs against them in the Small Causes Court, Bombay.

12 In these circumstances, the Notice of Motion is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

13 The learned advocate appearing on behalf of the applicants states that the office objections, if any, in the above Notice of Motion shall be complied with within a period of two weeks from today and have the Notice of Motion numbered. The said statement is accepted.

(B.P.COLABAWALLA, J.)