

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

CHAMBER SUMMONS NO. 892 OF 2019

IN

SUIT NO. 548 OF 2013

Nadeem Majid Oomerbhoy ...Applicant

In the matter between :

Nadeem Majid Oomerbhoy ..Plaintiff

Versus

Riyad Rashid Oomerbhoy & Ors. ...Defendants

And

Municipal Corporation of Greater Mumbai
& Ors. .. Respondents

ALONG WITH

NOTICE OF MOTION (LODG.) NO. 419 OF 2019

IN

SUIT NO. 548 OF 2013

Arbina Asgar Ali & Ors. ...Applicants

In the matter between :

Nadeem Majid Oomerbhoy ..Plaintiff

Versus

Riyad Rashid Oomerbhoy & Ors. ...Defendants

And

Municipal Corporation of Greater Mumbai
& Ors. .. Respondents

Ms.Kirti Munshi a/w. Mr. Z.A. Jariwala, Mr. Ganesh Ambekar i/b.
Thakore Jariwala & Associates for applicant/plaintiff in CHS/892/2019
and for plaintiffs in S/548/2013.

Mr.Jamshed Ansari and Mr. Ali Patel for applicant in NMSL/419/2019.

Ms.Nisha Shah I/b Kalpesh Joshi Associates for defendant Nos.1A and 1B.

Ms.Rutuja Patil a/w. Ms.Niyathi Kalra, Ms.Sonu Bhasi I/b. Negandhi, Shah & Himatullah for defendant Nos. 8 and 9.

Mr. Kanchan Rane, First Assistant to Court Receiver present.

CORAM : N.J. JAMADAR, J.

DATE : 15th JANUARY 2020

P.C.

1. Chamber summons No. 892 of 2019 is taken out by the plaintiff to amend the plaint so as to implead the defendants as per the Schedule annexed thereto and seek further reliefs against the persons who were proposed to be impleaded as the defendants.

2. This Court, in the orders passed 2nd August 2018 in Notice of Motion No. 1746 of 2017 and on 7th January 2019 in Notice of Motion No. 1819 of 2018 noted that in the portions of the property shown in Exhibit “A-1” to the plaint, there are certain occupants. In Notice of Motion No. 1819 of 2018, by the order dated 7th January 2019, an order in terms of prayer clause (f) of Notice of Motion was passed. Clause (f) of the Notice of Motion reads as under :-

“(f) that pending the hearing and final disposal of the above Suit, the Respondent No.1 to 21 to this Notice of Motion be ordered and directed to produce before this

Hon'ble Court all documents/ writings / approvals/NOCs / licenses/ permissions, pursuant to which, the respective structures tenanted / occupied/ owned by the Respondents:

a. standing on the suit property marked in Blue colour boundary have been constructed and are being occupied by the Respondents;

b. standing on the property known as Kanchwalla Estate but which use the suit properties Northern boundary wall for support.”

3. It is submitted that the Court Receiver has, in pursuance of the directions of the Court, submitted report. The report reveals that the proposed defendants are in occupation of the portions of the suit property, Exhibit “A-1” to the plaint. Hence, the plaintiff seeks their impleadment.

4. The persons who claimed to be in occupation of the portions of the property Exh.A-1 to the plaint, have taken out Notice of Motion (Lodg.) No.419 of 2019 seeking their impleadment and also for further reliefs that the orders passed by this Court on 2nd August 2018 in Notice of Motion No. 1746 of 2017 and on 7th January 2019 in Notice of Motion No.1819 of 2018 be recalled/vacated.

5. The learned counsel for the applicants in the Notice of Motion (Lodg.) No. 419 of 2019 submits that the applicants do not desire to

press prayer clause (b) of the notice of motion seeking vacation and/or recall of the orders 2nd August 2018 in Notice of Motion No.1746 of 2017 and on 7th January 2019 in Notice of Motion No. 1819 of 2018, at this stage.

6. The situation which thus emerges is that the persons, who are proposed to be impleaded as defendant Nos.13 to 37, in Chamber Summons No. 892 of 2019, are alleged to be in occupation of the property, Exhibit “A-1”, over which the plaintiff claims proprietary right.

7. Conversely, in Notice of Motion (Lodg.) No.419 of 2019, the applicants therein claimed to be in occupation of certain portions of the suit property. There is a broad identity of persons so far as Chamber Summons No. 892 of 2019, taken out by the plaintiff, and the Notice of Motion, taken out by the applicants, who claim to be in occupation of the suit property, Exhibit “A-1”. The plaintiff claims that apart from the applicants, few other persons, who are sought to be impleaded, are also in the occupation of the suit property.

8. The presence of those persons before the Court appears

necessary for a complete and effectual adjudication of the dispute between the parties.

9. None of the defendants have resisted the chamber summons.

10. In view of above, Chamber Summons No.892 of 2019 is made absolute in terms of prayer clause (a).

11. In view of disposal of Chamber Summons No. 892 of 2019, Notice of Motion (Lodg.) No. 419 of 2019 also stands disposed of with a direction to the plaintiff to also implead the applicants in the Notice of Motion, who are not proposed to be impleaded by the plaintiff in the Schedule of amendment as party defendants.

12. The applicants in the Notice of Motion are at liberty to take out appropriate application for seeking relief in terms of prayer clause (b), if the circumstances so warrant. The plaintiff shall carry out the necessary amendment in the plaint within a period of three weeks from today and serve amended copy of the plaint on the defendants and the Court Receiver as well.

13. The writ of summons be issued to the newly added defendants within a period of four weeks thereafter.

14. The suit be listed after eight weeks.

[N.J. JAMADAR, J.]