

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2585 OF 2020

Maneesh Bawa and Ors.

...Petitioners

Versus

Narsingh Jasrajji Rajpurohit and
Anr.

...Respondents

....

Mr. J.S. Kini i/b. Mr. S. Krishnappa for the Petitioners.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 7th APRIL, 2021.

P.C.:-

The Petitioners herein have challenged the order dated 19/11/2019 in LC Suit No.72 of 2016 whereby the learned Judge dismissed the application filed by the Petitioners under Order I Rule 10 of CPC.

2. The Respondent No.1, the Plaintiff in the suit, has challenged the notice under Section 55 of M.R.T.P. Act, 1969, issued by Respondent No.2-Corporation. The Petitioners filed an application under Order 1 Rule 10 of CPC claiming them to be the owners of the portion of the land wherein the suit structure is situated. The Trial Court while dismissing the application has held that the questions involved in the suit are restricted to validity of notice under Section 55

of the M.R.T.P. Act.

3. It may be mentioned that in the case of ***Mohd. Hussain Gulam Ali Shariffi vs. Municipal Corporation of Gr. Bombay and Ors. 2016 SCC Online SC 1887*** the challenge was to the legality of the notice issued under Section 351 of the MMC Act. In the said suit, application was filed under Order I Rule 10 *inter alia* on the ground that the applicants had ownership right in the suit house and that they were necessary party for proper adjudication of the rights of the parties. The trial Court had allowed the said application holding that the applicants were proper parties, if not necessary parties. The Writ Petition challenging the said order was dismissed. While setting aside the order of the trial court as well as of the High Court, the Apex Court observed that the basic question to be decided in the suit was whether the notice under Section 351 of the Act is legally valid or not and to decide this question only necessary party is MMC, who had issued the said notice. It was held that the applicants were neither necessary nor proper parties to decide the question involved in the suit. It was further held that the Plaintiff, who is dominus litus cannot be forced to add any person as party to the suit unless the person sought to be impleaded is necessary party and without his presence, neither the suit can proceed, nor the relief can be granted. The Apex Court has held that the

Applicants are neither necessary or proper parties to decide the suit.

4. The ratio laid down by the Apex Court in the aforesaid judgment is squarely applicable to the facts of the present case. As rightly observed by the Trial Court, the issue involved in the suit is only regarding legality and validity of the notice. The presence of the Petitioner is not required to decide the said issue. The Petitioner is neither a necessary party nor a proper party. Consequently Respondent No.1, who is a dominus litus, cannot be compelled to join the Petitioner as party to the suit.

5. Under the circumstances, there is no merit in the petition. The petition is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)