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

WRIT PETITION NO. 7280 OF 2019

Ganesh Kaka Yadav

....Petitioner

V/s.

Krantisinh Yasvantrao Patil and others

.....Respondents

Mr. Avinash B. Patil for the Petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 11, 2021.

P.C.:

1] S. C. Suit No. 155 of 2014 came to be initiated before the City Civil Court, Mumbai praying therein permanent injunction against the Defendant from dispossessing or disturbing the possession or creating third party rights etc.

2] In the said Suit, it is specific contention of the Respondent-Plaintiff that on 31/11/2011, Defendant to the said Suit namely Anand Kaka Yadav alongwith his wife and younger brother Ganesh Kaka Yadav came to the Suit premises and threatened to start

residing in the Suit premises.

3] In the aforesaid background, Ganesh Kaka Yadav i.e. Petitioner herein took out Chamber Summons No. 2247 of 2018 seeking impleadment as Defendant to the said Suit alleging that he is in possession of the Suit premises.

4] Said Chamber Summons came to be dismissed on 29/03/2019 by the City Civil Court, Mumbai. As such, this Petition.

5] The submissions of the Petitioner are, his father namely Kaka Yadav and his brother namely Ananda Yadav succeeded to the tenancy right of Kaka Yadav i.e. their father. It is further claimed that there are tenancy proceedings pending between the parties. It is also claimed that tenancy receipts issued in the name of his brother namely Ananda who is Respondent no. 21 to the present Petition. In the aforesaid background, claim is since the Petitioner and Defendant i.e. Respondent no. 21 have succeeded to the tenancy rights, Petitioner is also a necessary party to the Suit for injunction.

6] Petitioner so as to substantiate his claim has placed reliance on the Judgment of the Apex Court in the matter of **N. Anantha Reddy V. Anshu Kathuria and Ors [2014 AIR SCW 1058]**.

7] Learned counsel would urge that there is mistake apparent on the face of record in not impleading the Petitioner as party since he is also in possession of the Suit property by virtue of his tenancy right.

8] I have appreciated the aforesaid contention of the Petitioner whose prayer for impleadment was rejected.

9] As far as the Suit is concerned, once it is brought to the notice of Plaintiff that Petitioner has succeeded to the tenancy right alongwith Respondent 21 i.e. Defendant to the suit, it was for the Plaintiff to add or not to add the Petitioner as party Defendant as it is the Petitioner who will be exposed to the risk of not making the Decree binding on the Petitioner.

10] Principle of *Dominus Litis* permits that it is for the Plaintiff-Respondent nos. 1-20 to implead proper or necessary party to the Suit. If the Plaintiff has chosen not to add the Petitioner as party Defendant to the Suit, necessary consequences thereof will follow.

11] Merely because in the pleadings there is a reference that Petitioner has issued threats to the Plaintiff alongwith Defendant to the Suit does not prompt this Court or the Court below to direct his impleadment as Defendant.

12] In the aforesaid background, support drawn by the Petitioner from the Judgment of the Apex Court in the matter of **N. Anantha Reddy** [Cited supra] will be of hardly any assistance.

13] Claim of the Petitioner that by taking disadvantage of the pendency of present Suit, his brother might frustrate his right to claim succession in tenancy, need not to be gone into in present proceedings as the Petitioner is at liberty to initiate such other

proceedings against his brother who is Defendant to the Suit in question. That being so, no case for interference is made out. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]