

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7232 OF 2021**

Rajni Amarlal Ramrakhiani ...Petitioner

Versus

Anil Arjandas Ballani & Ors ...Respondents

Mr. Amarlal Ramrakhiani, for the Petitioner.

Mr. P.R. Arjunwadkar, i/b P.V. Badadare, for Respondent No. 1.

Mr. Suresh M. Kamble, for Respondent No. 3.

CORAM: Smt. Bharati Dangre, J.

DATED: 8th December 2021

P.C.:-

1. The Petitioner is aggrieved by an order passed by the learned Joint Civil Judge Senior Division, Kalyan on **17.12.2019** below Exhibit 24 in Special Civil Suit No. 38 of 2018. By the application filed below Exhibit 24, the Petitioner who happens to be the brother of the original Plaintiff sought intervention in the suit by bringing an application under Order I Rule 10(2) of the Code of Civil Procedure, 1908. The application is rejected by recording that considering the

nature of the suit and its true scope, the Applicant is not a necessary party.

2. The suit in which the intervention is sought, when perused would reveal that the Plaintiff therein is claiming to be the owner and in possession of a building situated in the location set out in paragraph 1 of the plaint and the cause of action for the present suit is the Special Notice of Assessment issued by the Corporation under Rule 15(2) of the Taxation Rules assessing the tax due on the said premises which are occupied by the Plaintiff. The entire plaint plead about the right of the Corporation to effect such an assessment which has been crystallized in the notice dated 06.11.2017 and a warrant of attachment issued by the Corporation on 04.01.2018. The dispute raised is about the retrospective effect of the tax on the property of the Plaintiff, which he claim to be occupying.

The intervenor, i.e. sister of the Petitioner claims that she is also an owner of the property. Her claim is based on her share as a co-parcener being the legal heir of Mr. Arjandas Balani, the father of the two and her interest in the property is sought to be staked by the intervention application in the aforesaid premise. It is informed by the learned Counsel for the Petitioner that the present Petitioner/the intervenor has already instituted a Civil Suit for partition which is pending.

The interest of the Petitioner in the suit property can only be crystallized upon the outcome of her suit but as far as the suit which is filed by the Respondent, i.e. the original Plaintiff being aggrieved by the action of the Municipal Corporation do not make her a necessary party.

3. The learned Judge has rightly considered the aforesaid position of law and has rejected the application for intervention.

4. The Writ Petition is dismissed.

(Smt. Bharati Dangre, J.)

Note: This order is modified as per order dated 7th June 2022 passed on a praecipe to correct the date in the third line of paragraph 1.