

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

WRIT PETITION NO.6520 OF 2021

Shri. Vishwanath Devchandra Budha and Anr. ..Petitioners
Versus
Suresh Pandurang Budha and Anr. ..Respondents

Mr. V. H. Narvekar, for the Petitioners.
Mr. Vishal Chavan, for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 7th MARCH, 2022

PC.

1. In LC Suit No.2425 of 2018 taken out against MCGM questioning the notice issued under Section 354 of the MCGM Act, prayer of the petitioner for impleadment under Order I Rule 10(2) of the CPC is rejected vide impugned order thereby Chamber Summons No.1327 of 2018 is rejected.

2. Submissions of learned counsel for the respondent No.1, who is plaintiff in LC Suit No.2425 of 2018 are, considering the nature of claim in the suit, the lis to be decided does not warrant the claim of the petitioner to be considered on positive side thereby granting impleadment as a proper or appropriate party as the suit claim can be decided in the absence of the petitioner.

3. It is required to be noted that the respondent No.1 is

owner of land CTS No.386/5 of Versova, Taluka Andheri whereas petitioner claims to be owner of land CTS No.386/4 on same place. It is the case of the petitioner that the respondent No.1 has encroached on his aforesaid portion thereby carrying out illegal construction which has led to issuance of notice in question. As far as aforesaid contentions are concerned, plaint in LC Suit No.2425 of 2018 specifically speaks of the aforesaid issue particularly in paragraph 2 therein. The fact remains that even if the suit at the behest of the petitioner being LC Suit No.378 of 2014 is pending adjudication against the respondent No.1 for removal of encroachment, the very pleadings of the present respondent No.1 in his plaint specifically referring to the pendency of the suit of the petitioner and the rival claim in these suits prompts this Court to form an opinion that the petitioner is appropriate party to the suit in question. This Court is required to be sensitive to the fact that decision on the structure as to whether same is authorized or not is likely to affect the right of the petitioner in LC Suit No.378 of 2014. As such, this Court prompts to form an opinion that the petitioner is appropriate party to LC Suit No.2425 of 2018.

4. That being so, the order impugned dated 28th January, 2021 passed by the learned Ad-hoc Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai rejecting Chamber Summons No.1327 of 2018 is hereby quashed and set aside.

5. Chamber Summons No.1327 of 2018 stands allowed.

6. If respondent No.1 fails to implead the petitioner as defendant No.2 to the suit within a period of four weeks from today, it shall be open for the petitioner to get himself impleaded by filing written statement.

7. The statement of the petitioner that he shall be filing written statement within a period of six weeks from today is accepted as an undertaking to this Court.

8. The petition as such stands allowed in above terms.

[NITIN W. SAMBRE, J.]