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Shridhar Upendra Nayak
S/o Late Upendra Sena Nayak Petitioner.
V/s
M/s. Prabhat Sadan Properties
Pvt. Ltd and Ors. Respondents.

CORAM: NITIN W. SAMBRE, J.

P.C.:-

1] Order impugned is dated 12/3/2021 whereby prayer of the Petitioner-Plaintiff/Appellant vide Exhibit 16 for impleadment of third party under Order 1 Rule 10, so also for appointment of Court Receiver under Order 40 Rules 1 and 2 of the Code of Civil Procedure came to be rejected.

2] Petitioner initiated RAD & E Suit No.1679 of 2014, seeking relief of declaration of tenancy, eviction, mandatory injunction which was dismissed on 15/10/2018 by the Small Causes Court, Mumbai. Feeling aggrieved, (R) Appeal No.398 of 2018 came to be moved in which Application-Exhibit-16 with a prayer for impleadment of third party under Order 1 Rule 10 and appointment of Court Receiver under

Order 40 Rules 1 and 2 came to be moved which is rejected vide impugned order dated 12/3/2021.

3] Submissions are, during pendency of the suit Respondents/Defendants have inducted third party and that being so property is likely to be destroyed and as such there is necessity of appointment of the Court Receiver. According to him, Respondents/Defendants have inducted one Firoze Shafi Ahmed Shaikh, a third party. As it was noticed that electric meter is transferred in the name of said third party, which was installed in the suit premises, said fact is formed to be the basis for impleadment. Contentions of Counsel for the Petitioner are, Court below committed an error in rejecting prayer for impleadment and appointment of Court Receiver, as the order impugned is contrary to the very principle of law that statutory appeal is continuation of original proceedings i.e. suit in question. According to him, by granting impleadment of third party, Appellate Court would have been assisted properly in deciding the issue. He would further urge that, fact that electric meter installed in the name of third party prima faice demonstrates about intentions of Respondents/Defendants.

4] I have appreciated aforesaid submissions.

5] Fact remains that suit of the Petitioner came to be dismissed on 15/10/2018 and that being so, his claim for declaration of tenancy rights, eviction and mandatory injunction was turned down.

6] Application-Exhibit-16 is claimed to be based on information received by the Petitioner about installation of electric meter in the name of third party. In the said Application, it is claimed that from June, 2019 when the Petitioner tried to pay monthly electricity charges to the BEST, he could notice an error and upon his visit to the office of BEST, he was shocked to know about installation of electric meter in the name of third party.

7] Fact remains that aforesaid fact of knowledge of the Petitioner about installation of meter in the name of third party is subsequent to the filing of the suit and particularly after suit was dismissed. As such, Petitioner is trying to enhance scope of the suit in the absence of there being any specific prayer in relation to the third party.

8] Court below was justified in observing that claim put-forth by the Petitioner is contrary to very scheme of the provisions of Order 40 Rules 1 and 2, so also Order 1 Rule 10 of the Code of Civil Procedure. In that view of the matter, no illegality could be noticed in the order impugned. That being so, Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)