

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

WRIT PETITION NO. 6355 OF 2021

1. King Restaurant and Stores,
A Partnership Firm, having its
principal place of business at :
G-1, A-4, B-1 to 3 Ahmed Chambers,
386, Lamington Road, Mumbai-400 004.
2. Mohamed Husain son of Mohamedali
Mojeznama Haideri
Iranian Muslim, Aged about 56 years,
Occupation : Business, Inhabitant of
Mumbai, presently residing at :
4th Floor, Ahmed Chambers, 386,
Lamington Road, Mumbai-400 044. ... Petitioners
V/s.
1. Salman Amin
Age - 54 years, Occu.: Business,
Canadian Citizen of Indian Origin,
while in India residing in 2, Rukiya
Manzil, 61-A Bhulabhai Desai Road,
Mumbai-400 026 and permanently
residing at : 25, Western Crescent Ajax,
Ontario, L1 TOC7, Canada.
2. Mohamed Usman Dada,
Muslim, Indian Inhabitant, Aged - 66 years,
Occu. : Business, residing at Raj Neelam,
Dr. R. Patel Lane, Breach Candy,
Mumbai - 400 026.
3. Mr. Masood Hasham Dada,
Muslim, Indian Inhabitant, Aged - 62 years,
Occ. : Business, residing at :
Rukhiya Manzil, 61-A Bhulabhai Desai
Road, Mumbai - 400 026.

4. Court Receiver, High Court, Bombay
In High Court Suit No. 648 of 1986,
High Court Suit No. 1471 of 1991,
Having Office at 2nd Floor,
Bank of India Building, M.G.Road, Fort,
Mumbai-400 023. ... Respondents

Mr.D.S.Mhaisapurkar a/w Ms.Siddhi Bhosale for Petitioners.
Mr.Gauraj Shah a/w Mr.Chirag Bhavsar i/b. Vis Law Practice for
Respondents.

CORAM : ABHAY AHUJA, J.
RESERVED ON : 14th JULY 2022
PRONOUNCED ON : 1st AUGUST 2022

ORDER :

1. The principal *lis* concerns an immovable property comprising of a building known as Ahmed Chambers, situate at 386 Lamington Road, Mumbai - 400 004. The Petitioners are stated to be the tenants in respect of the subject property.

2. By this Petition, Petitioners (Defendants in the R.A.E.Suit No. 336/582 of 2012 before the Small Causes Court, Bombay instituted by Respondents No. 2 and 3 herein being the Plaintiffs therein for evicting the Defendants) are aggrieved by an Order dated 21st February, 2020 in Revision Application No.132 of 2019 setting aside the Order of the Trial Court dated 21st January, 2019 below Exh.41 in the said Suit allowing the Application at Exh.41 to

implead the Respondent No.1 herein in the said Suit.

3. The Respondent No.1 herein filed an application in the said suit before the Small Causes Court for being joined as a party to the Suit. It is the case of Respondent No. 1 that he is the son of late Farhad Amin who was the daughter of late one Mohamed Hasham Dada. It is submitted that one Late Bai Fatimabai was the owner of the said Ahmed Chambers property. The said property thereafter came to the share of Mohamed Hasham Haji Dada being the legal heir and son of Bai Fatimabai by way of a Consent Decree. The said Mohamed Hasham Haji Dada was married to one Halimabai Dada. Mohamed Hasham Dada had four children viz., (1) Ahmed Izzat Dada (son, late husband of Zarina Izzat Ahmed and father of (i) Smt.Saadia Moosa ; (ii) Smt.Nasreen Saleh Salim nee Asra and (iii) Smt.Farah Dada, (2) Farhat Amin (daughter, late mother of Sauda Amin and the Applicant herein) ; (3) Mohamed Usman Dada (Plaintiff No.1) and (4) Masood Hasham Dada (Plaintiff No.2).

4. Earlier on 8th December, 1984, Ahmed Izzat Dada passed away intestate, survived by wife and three daughters. Mohamed Hasham Dada died intestate on November 23, 1987 and was survived by Halimabai Dada (wife), Farhat Amin (daughter) and

two sons. As Ahmed Izzat Dada had predeceased his parents and therefore, as per the customary law, his wife, Zarina Izzat Ahmed and daughters, (i) Smt.Saadia Moosa; (ii) Smt.Nasreen Saleh Salim nee Asra and; (iii) Smt. Farah Dada have no share, right, title and interest in the Suit property. Accordingly, the properties of Mohamed Hasham Dada including the Ahmed Chambers property and the Kurla property devolved upon Halimabai Dada (wife), Farhat Amin (daughter).

5. On 13th January, 1996, Farhat Amin passed away intestate and was survived by Respondent No.1 herein and Sauda Amin. The Respondent No.1 and Respondents No. 2 and 3 are stated to be members of the same family and the parties are descendants of late Bai Fatimabai. After the death of Mohamed Hasham Haji Dada, the 1st Respondent's mother late Farhat Amin became entitled to the share in the said Ahmed Chambers property and thereafter, after the demise of Farhat Amin the 1st Respondent became entitled to the share in the said property.

6. It is claimed by Respondent No. 1 that at no point of time had the Respondent No.1 abandoned and/or relinquished his share in

any of the ancestral property/business including the said Ahmed Chambers property; that after the death of Mohamed Hasham Dada in 1987, the Plaintiffs took charge of the said property and have exclusively managed it ever since. That the Plaintiffs i.e. the Respondents No. 2 and 3 herein have exclusively collected rent by exploiting the said property to the exclusion of all others and have also enjoyed the rental income and/or income from transfer accruing therefrom to the exclusion of all others and that the Plaintiffs have not parted with and/or accounted for a single penny received and/or earned by them from the said property.

7. Further, Halimabai M. H. Dada died on 11th February, 2012 and after her demise, the relation between the parties was cordial. Respondent No. 1 travelled to Mumbai from Canada in or around April, 2013 where he was then residing and enquired with the Plaintiffs about his mother's share in the ancestral property including the said property which should have been given to the 1st Respondent or should have been identified as such, on the demise of his mother Farhat Amin, who died intestate on 13th January, 1996. The Respondent No.1 also requested the Plaintiffs to provide him with accounts pertaining to rental income and transfer income from

the said property as well as with respect to his share in the asset value of the said property.

8. Since disputes had arisen with respect to the said property, in order to amicably resolve the disputes, a mediation meeting was held after which Family Arrangement dated 16th June, 2013 was entered into stipulating shares of the properties.

9. Thereafter, correspondence was exchanged between the Plaintiffs and the Respondent No.1. It is claimed that the as Plaintiffs were not giving particulars in respect of the Suit property, the Respondent No.1 became apprehensive that the Plaintiffs may usurp the properties/premises in question.

10. In a Suit for partition filed in the Bombay High Court being Suit No. 506 of 2014 (along with Notice of Motion No.1200 of 2014 in Suit No. 506 of 2014 with Interim Application No.107 of 2020 in Suit No. 506 of 2014, where the Respondent No.1 herein was the Defendant No.3 therein), by an order dated 24th June, 2022 in terms of the Consent Terms between the parties of even date the said suit was disposed. In the said Consent Terms, it has been agreed that the Respondent No.1 (who was Defendant No.3 therein) would have 14.27% share as co-owner having distinct and

independent rights in the right, title and interest in the immovable property comprising the said property. The relevant paragraph 1(b) of the said Consent Terms is quoted as under:

“b. The right title and interest in the immovable property comprising the building known as Ahmed Chambers situated at 386 Lamington Road, Mumbai 400 004 shall belong to and be held by the following persons, as co-owners, having distinct and independent rights, in the proportion stated below:

<i>Plaintiff No.1</i>	<i>Zarina Dada</i>	<i>21.4%</i>
<i>Defendant No.1</i>	<i>Usman Dada</i>	<i>28.6%</i>
<i>Defendant No.2</i>	<i>Masood Dada</i>	<i>28.6%</i>
<i>Defendant No.3</i>	<i>Salman Amin</i>	<i>14.27%</i>
<i>Defendant No.4</i>	<i>Sauda Amin</i>	<i>7.13%</i>

(These 5 persons shall hereafter be referred to as Owners of Ahmed Chamber).”

11. The Plaintiffs in the subject Suit who are the Defendants No.1 and 2 therein are having a share of 28.6% each in the said property.

12. Further, Paragraph 1(f) of the said Consent Terms refers to immovable property bearing No.A3 on the ground floor of the said property standing in the name of partnership firm of International Trading Corporation (now dissolved) which shall be sold and the proceeds thereof to be distributed in accordance with the proportion therein, where the Plaintiffs in the subject Suit before the Small Causes Court viz., Usman Dada and Masood Dada would get 22.5%

and 30% respectively and the Respondent No.1 in the Petition viz., Salman Amin would get 21.67% of the said sale proceeds.

13. Mr. Gauraj Shah, learned Counsel for Respondent No.1 submits that the Consent Terms have been filed in Suit No.506 of 2014 where the share of Respondent No.1 has clearly been accepted by the Plaintiffs to be 14.27%. That Respondent No. 1 has interest in the said property and as such, he is the co-owner and landlord entitled to become a necessary and proper party to the proceedings. Learned Counsel submits that therefore the impugned order does not call for any interference.

14. On the other hand, Mr. Mhaisapurkar, Learned Counsel for the Petitioner would submit that the Hon'ble Supreme Court in the case of ***Kanaklata Das and Others V/s. Naba Kumar Das and Others [(2018) 2 Supreme Court Cases 352]*** has clearly observed that it is not necessary for all the owners/landlords to be joined in filing of an eviction suit against the tenant. He submits that the Plaintiff as *dominus litis* cannot be compelled to make any third person a party to the suit, be that a plaintiff or a defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be

decided effectively. He submits that the Apex Court in the said case, observed that the Respondent No.1 who claims to be a co-sharer or/ and co-owner with the Plaintiff to the suit property is neither a necessary nor a proper party in the eviction suit. The Hon'ble Supreme Court went on to observe that such eviction suit can be decreed or dismissed on the merits even without the impleadment of Respondent No.1. In an eviction suit, the question of title or the extent of the shares held in the property cannot be decided nor can be made subject matter for its determination. He submits that in an eviction suit, as observed by the Hon'ble Supreme Court in ***Kanaklata Das and Others V/s. Naba Kumar Das and Others (supra)*** the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails.

15. I have heard learned Counsel Mr.D.S.Mhaisapurkar for Petitioners and Mr.Gauraj Shah, learned Counsel for Respondents at length and with their able assistance, have perused the papers and proceedings in the matter.

16. It is not in dispute that earlier on also, an application for impleadment under Exh.36 was made *inter alia* by the Plaintiffs in said R.A.E. Suit No. 336/582 of 2012 pending in the Small Causes Court , where the Respondent No.1 was also an Applicant and the Trial Court vide order dated 27th September, 2016 passed an order allowing withdrawal of the said application recording that vide Affidavit dated 1st August, 2016, filed by the second Plaintiff, it has been undertaken on oath that he will pursue the present litigation to its logical end and the Applicants therein had no reason to worry about the same; that in view of the said undertaking, the Applicants therein did not want to proceed with the said application and withdrew the said application. The Respondent No.1 in the subsequent Revision application has stated that there was collusion between the Plaintiffs and the Defendants in the said Suit and therefore, he had filed the said application which has been allowed by the order impugned in this Petition.

17. As also noted above, pursuant to the Consent Terms already filed and taken on record by this Court on 24th June, 2022 in Suit No.506 of 2014, the Respondent No.1 viz., the Applicant before the Small Causes Court is a co-owner having distinct and independent rights to the extent of 14.27% in the said property as well as a right of 21.67% to the sale proceeds of immovable property No.A3 on the ground floor of the said property. Being a co-owner of the said property, there is no doubt that the Respondent No.1 would be interested in the outcome of the litigation pending before the Small Causes Court. The Suit for Partition has already been settled by the filing of the said Consent Terms and as such, there is no request before the Small Causes Court for deciding the title or share of the co-owners.

18. The Respondent No.1 is not confident about the conduct of the other co-owners with respect to the progress of the suit against the tenant and is having doubt that there is collusion between the Plaintiffs and Defendants and has filed the proceedings to be impleaded as a party. Therefore, as rightly observed by the Appellate Bench at Small Causes Court that in such circumstances the first Respondent's right to pursue the suit cannot be taken away

saying that he has only right to file partition suit and obtain his share and has no right to pursue the eviction suit thereby setting aside the order of the Tribunal Court refuting impleadment of Respondent No.1 to said suit. Even otherwise as noted above, consent terms have been filed in the Partition suit which was earlier pending in this Court where the Respondent No. 1 has been stated to be a co-owner having 14.27% distinct and independent right in the said Ahmed chambers property. As can be seen, on the earlier occasion, the application for impleadment was withdrawn as an undertaking was given by the Plaintiffs in the Suit that they would pursue the litigation to its logical end. However, now the Petitioner has expressed his apprehension which is evident from the manner in which the application for his impleadment has been opposed and also in the filing of the present Petition; why would a Plaintiff not want another co-owner to be impleaded as a party to the Suit and challenge his impleadment in the Suit against the tenants; no logic or rationale can be seen behind this conduct.

19. The case of *Kanaklata Das and Others V/s. Naba Kumar Das and Others (supra)* relied upon by the learned Counsel for Petitioners was a case where, in an ejection suit, an application was

filed under Order 1, Rule 10(2) of the Code of Civil Procedure by the Respondent No.1 praying that he may be allowed to become co-plaintiff along with the appellants on the ground that he was a member of the appellants family and being so, he had a right, title and interest not only in the suit premises, but also in other family properties as one of the co-owners. It is on the basis of these allegations and with a view to protect his interest in the suit premises, he sought impleadment in the suit. The Trial Court dismissed the application, but the same was allowed by the High Court. It is against the order of the High Court that the matter reached the Apex Court. The Apex Court, noting that in an eviction suit filed by the landlord against the tenant, the landlord and the tenant are the only necessary parties, that the landlord is required to plead and prove two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises; first that there should exist a relationship of the landlord and tenant between the plaintiff and the defendant and second; the existence of ground(s) on which the plaintiff landlord had sought eviction under the Rent Act. The Apex Court observed that when these two things are proved, the eviction suit succeeds. Thereafter, the Hon'ble Supreme Court observed that the question of title of the suit

premises was not germane for the decision in an eviction suit. The Supreme Court observed that unless a person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed nor can be decided effectively, the plaintiff being a *dominus litis* cannot be compelled to make any third person a party to the suit. What weighed with the Hon'ble Supreme Court, in my view, was that the Respondent No.1 in the facts of that case could not demonstrate how he was a co-sharer wanting to become a co-plaintiff or defendant or what were his shares in the property which could only be decided by a Civil Court. It is in this background, in my considered view that the Hon'ble Supreme Court held that the Respondent No.1 who claims to be a co-sharer and or co-owner with the Plaintiffs is neither a necessary nor a proper party in an eviction suit. I find that my view is fortified in view of what the Apex Court observed in Paragraphs 14 to 18 of the said order which is quoted as under:

“14. In the eviction suit, the question of title or the extent of the shares held by the appellants and Respondent 1 against each other in the suit premises cannot be decided and nor can be made the subject-matter for its determination.

15. The reason being that this is not a suit between the appellant-plaintiffs and Respondent 1 where their inter se rights relating to the suit premises can be gone into but rather is an ejectment suit filed by the appellants against

Respondents 2 to 5 for their eviction from the suit premises.

16. Therefore, the lis in the suit is between the appellants on the one hand and Respondents 2 to 5 on the other hand and the decision in the suit would depend upon the question as to whether there exists any relationship of landlord and tenant between the appellants and Respondents 2 to 5 in relation to the suit premises and, if so, whether the grounds pleaded in the plaint for claiming eviction of Respondents 2 to 5 are established or not. For deciding these two main questions, the presence of Respondent 1 is not necessary.

17. For these reasons, we are of the considered opinion that Respondent 1 is neither a necessary and nor a proper party in the suit.

18. We, however, make it clear that any finding whether directly or indirectly, if recorded by the trial court touching the question of title over the suit property, would not be binding on Respondent 1 regardless of the outcome of the suit and Respondent 1 would be free to file an independent civil suit against the appellants for a declaration of his right, title and interest in the suit premises and in any other properties, if so, and claim partition and separate possession of his share by metes and bounds in all such properties.”

(emphasis supplied)

20. In the case at hand, the filing of the consent terms has clearly set out the share of the Respondent No.1 in the suit property. The *inter se* rights have been crystallized by the filing of the consent terms on 24th June, 2022 in this Court. The Respondent No. 1 has not abandoned or relinquished his share. There is no question of now going back again to a civil court or requesting the trial court to

decide the same. It is undisputed that being the co-owner of the suit property, the Respondent No.1 is one of the landlords of the said property and he would have the relationship of landlord and tenant with respect to the defendants in the suit. He would be a co-landlord with the plaintiffs with respect to the suit/said premises/property. The Respondent No.1 is apprehensive about the progress of the said suit. No material has been placed on record to demonstrate otherwise. Therefore in my view, the ratio in the case of ***Kanaklata Das and Others V/s. Naba Kumar Das and Others (supra)*** would not apply to the facts of this case

21. In the circumstances, no fault can be found with the impugned order. I am, therefore, not inclined to interfere with the same. The Petition fails and is, therefore, dismissed. Ad-interim relief granted earlier stands vacated. No costs.

(ABHAY AHUJA, J.)

Date : 1st August, 2022

After the order has been pronounced, Mr.D.S.Mhaisapurkar, learned Counsel for the Petitioners seeks an extension of the ad-interim relief granted earlier. The request is rejected.

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(ABHAY AHUJA, J.)