

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

WRIT PETITION NO.11017 OF 2019

Smt. Indra Rani Ugrasen ..Petitioner
Versus
Shri. M. T. Chavan & Ors. ..Respondents

Mr. Anilkumar K. Patil, for the Petitioner.
Mr. K. K. Pandey for Respondent No. 1
Mr. Rakesh Kumar R. Tiwari for the Respondent Nos. 3 & 4.

CORAM : NITIN W. SAMBRE, J.

DATED : 7th JULY, 2022

P.C.:

In eviction suit, petitioner suffered the decree of dismissal against which an appeal is pending and in the said Appeal at Exhibit-57 an application for impleadment is taken out. An affidavit is tendered to said Exhibit-57 by the respondent and proposed respondent no. 1

2. In paragraph no. 6 of the said affidavit following categorical admissions are given by respondent and respondent no. 1 :

6. I state that the proposed respondent is occupying Room No. 3 viz. suit premises since 2006 or thereabout along with respondent No. 2; therefore even if the order is passed on 06.10.2008 without joining the proposed respondent as a party therein, any question that the proposed respondent has violated the order of this court will not arise. Moreover, proposed respondent were not party to the suit proceeding as such any question to join them in appeal will not arise. There is no any notice issued

to the proposed respondent at any point of time by the appellant or his advocate to serve the order dated 06.10.2008. Looking to the faith of the appeal that the appellant will not successful, the appellant by this application with malafied intention trying to mislead the Hon'ble Court as well as the respondent and the proposed respondents. The proposed respondents are neither necessary nor proper party to the appeal or with the contempt proceeding and/or in the appeal. Therefore, the application is malafied, may be rejected with costs.

3. In this background, the claim is, respondent and proposed respondent no. 1 ought to have been permitted to be incorporated in the appeal.

4. Prayer is opposed by respondent and proposed respondent no. 1 on the ground that suit was already dismissed against the respondent were the proposed respondent was not party and as such proposed respondent cannot be added in appeal so as to fill-in the lacuna. It is also claimed that the cause on which suit was initiated is not available as against the respondent and proposed respondent no. 1.

5. I have considered the said submissions.

6. In reply to Exhibit-57 a categorical admission appears to have been given by the respondent and proposed respondent no. 1 which is reproduced herein above. As regards possession of the property, whether the proposed respondent or other regular respondents to

appeal are in possession of the suit property will be an issue to be decided on merits of matter after appreciating the pleadings and evidence. However, this court is required to be sensitive to the pleadings which are referred to hereinabove in affidavit-in-reply. Such pleadings on the part of the respondents appears to be significant for the purpose of grant of prayer, as is moved by the Petitioner.

7. Though it is claimed that suit was dismissed, however, this court is required to be sensitive to the principle of law that the appeal is in continuation of the suit and as such, it is always open and available to the petitioner to seek impleadment even at appellate stage in absence of expressed provision and also in absence of statutory embargo.

8. In that view of the matter, the order impugned is quashed and set aside.

9. Application at Exhibit-57 stands allowed. Appropriate amendment be carried out within four weeks.

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(NITIN W. SAMBRE, J.)