

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8839 OF 2023

Mr. Sunny Aaron Waskar

...Petitioner.

Versus

Municipal Corporation of
Greater Mumbai & Ors.

..Respondents.

Mr. Sushil upadhyay i/b Mr. Ashok M. Sarogi for the petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : July 21, 2023.

P. C. :

1. The challenge in the petition is to the order dated 23rd March 2023 permitting the legal heirs of deceased defendant no.2 to be brought on record.

2. Learned counsel appearing for the petitioner-plaintiff submits that defendant no.2 was permitted to be brought on record pursuant to the chamber summons which was instituted. He would further submit that apart from bringing on record the death certificate, there is no document which has been produced on record to show that the respondent-applicants are the legal heirs of deceased defendant no.2. He would further contend that this is a suit

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which has been instituted challenging the validity of notice issued under section 351 and as such the legal heirs of deceased defendant no.2 are not necessary parties.

3. Considered the submissions.

4. The trial Court has taken into consideration the fact that defendant no.2 was permitted to be impleaded as party by the order dated 30th October 2015 and accordingly the amendment was carried out. The trial Court has rightly considered the provisions of order-22 rule-3 of the CPC and has permitted the legal heirs of deceased defendant no.2 on record.

5. The original defendant no.2 claimed to be the co-owner of the premises which was subject matter of notice issued by the municipal corporation under section 351. Apart from stating that no document has been brought on record by the applicant in the chamber summons, the plaintiffs have not made any specific assertion that the applicants in the chambers summons are not the legal representatives of deceased defendant no.2.

6. Considering the provisions of order 22 rule 3 CPC in the event

of death of defendant, the legal heirs are required to be brought on record as the right to sue survives. In that view of the matter, there is no infirmity in the impugned order dated 23rd March 2023. Writ petition stand dismissed.

7. Liberty to the petitioner to file an application before the trial Court seeking extension of time to carry out amendment.

[Sharmila U. Deshmukh, J.]