

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5911 OF 2023

Dharmendra Pannalal Vyas & Anr.

...Petitioners.

Versus

Manilal M. Shah & Ors.

..Respondents.

Ms. Mona Vyas for the petitioner.

Mr. R.Y. Sirsikar for respondent No.4 MCGM

Mr. Anil R. Mishra for respondent No.1 to 3.

Coram : Sharmila U. Deshmukh, J.

Date : June 21, 2023.

P. C. :

1. Being aggrieved by the order dated 25th November 2022 passed by the City Civil Court, Mumbai in Chamber Summons No.1250 of 2021 in S.C. Suit No.2492 of 2021, rejecting the petitioner's application for being impleaded as a party to the suit, the present writ petition has been preferred.

2. Heard Ms. Mona Vyas, learned counsel appearing for the petitioners, Mr. Anil Mishra, learned counsel appearing for respondent Nos.1 to 3 and Mr. Sirsikar, learned counsel appearing for respondent No.4.

3. S. C. Suit No. 2492 of 2021 was instituted by respondent Nos.1 to 3 challenging the validity of notice issued by respondent No. 4–MCGM under section 351 of the Mumbai Municipal Corporation Act, 1888 seeking to demolish the unauthorised structure of the plaintiff – respondent nos.1 to 3 herein. In the said suit, the petitioners claiming to be the owners of land in question on which the alleged unauthorised structure is standing, moved an application for being impleaded as a party, which came to be dismissed by the City Civil Court by placing reliance on the decision of the Apex Court.

4. Learned counsel for the petitioner submits that respondent Nos.1 to 3 have filed a declaratory suit claiming tenancy in respect of the suit structure and, as such, any order which is passed in the present suit will affect the outcome of declaratory suit.

5. Per contra, learned counsel for respondent Nos.1 to 3 places reliance on the decision of the Apex Court in ***Ramesh Kundanmal v. MCGM [1992(2) SCC 524]***. He would further submit that the petitioners are neither necessary parties nor proper parties and, as such, the application for impleadment is rightly rejected.

6. Considered the submissions of the parties.

7. The subject matter of suit is a notice issued by the MCGM under section 351 of the MMC Act, 1888 seeking to demolish the unauthorised structure of plaintiff. The claim of petitioners is that they are owners of the land and that the structure which forms subject matter of notice issued under section section 351 of MMC Act, 1888 has not been erected by them. It is further claimed that there is a declaratory suit filed by the plaintiffs seeking a declaration of tenancy in respect of suit structure. In the proceedings which are pending before the City Civil Court, Mumbai the only issue which will be considered is the validity of or otherwise of the notice issued by MCGM under section 351 of the MMC Act. While deciding the said issue, neither the issue of tenancy of respondent Nos.1 to 3 *qua* the petitioners nor the issue of ownership of the property, viz., the land, will be considered by the City Civil Court. The suit which has been instituted by respondent Nos.1 to 3, i.e., a declaratory suit will not be affected by the outcome of the proceedings in City Civil Court inasmuch as in those proceedings, the only issue of the validity of notice will be considered. In such an event, it cannot be said that the petitioners have a direct and substantial interest in the subject matter of the suit inasmuch as it is the petitioners' own claim that they have no right in the structure and their ownership vests in the land underneath. The decision in the case of ***Ramesh Kundanmal v. MCGM***

[1992(2) SCC 524] squarely applies to the facts of the present case.

8. In view of the above, there is no infirmity in the impugned order dated 25th November 2022 passed by the City Civil Court. Writ petition being without merit, stands dismissed.

[Sharmila U. Deshmukh, J.]