

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 397 OF 2019
IN
CHAMBER SUMMONS NO. 8 OF 2016
IN
SUIT NO.675 OF 2015**

Sun Corp.	...Appellant
Versus	
Veekaylal Investments Co. Pvt. Ltd. And 5 Ors	...Respondents

Mr. Parag Tilak a/w Ms Ketki Gadkari for Appellant.
Mr. Jagdigh Aradwad (Reddy) i/b Mr. Rajeev Sharma for Respondent No.1.

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL JJ
DATED : 8th FEBRUARY 2023**

P.C. :

1 Today the matter is listed for settlement. Mr. Tilak stated that though this court had stood over the matter in November 2022 for filing settlement terms, the parties have not been able to arrive at settlement for whatever reasons and sought further time. The court did not feel it appropriate to grant any further time because nothing concrete came from counsel regarding the stage at which the settlement talks were. The court also felt that this appeal impugns an order of 2017 and, therefore, the appeal cannot wait any longer and decided to hear the appeal.

2 Appeal is impugning an order dated 7th November 2017 by which, the chamber summons taken out by respondent no.1 in the suit to be impleaded as party defendant to the suit, was allowed.

3 Mr. Reddy, at the outset, raise the issue to the maintainability of the appeal. We are in agreement with Mr. Reddy that this appeal is not maintainable. We find support for this view from the judgment of this court in ***Madhukar Venkatesh Ullal Vs. Anita Hermy D'souza & Ors.***¹, where the court held that an order passed by Trial Judge on application under the provisions of Order 1 Rule 10 of CPC directing addition of a party was not appealable under clause 15 of the Letters Patent. Paragraphs 22 and 23 of the said judgment read as under:

“22. In so far as an order of addition of parties is concerned, surely, it is not a final judgment. It is so because such order does not decide the questions or issues in controversy in the suit; it does not bring an end to suit or action. Such order is not preliminary judgment as well. By ordering addition of the party, the suit is not disposed of on a preliminary point. The debatable issue is whether the order of addition of party is interlocutory or intermediary judgment as categorised by the Supreme Court and hence appealable under clause 15 of Letters Patent. Our answer is in the negative. For one, such order does not possess the characteristics and trappings of finality in as much as it decides nothing and is only initiatory. The other it does not adversely affect a valuable right of the party directly nor decides an important aspect of the trial in an ancillary proceeding. Such order is only procedural in nature. Ultimately nature and effect of the order would be determinative in holding whether such order is 'judgment' within the meaning of clause 15 of the Letters Patent. Where trial Judge allows an impleadment of the party being either necessary or property party, what is ordered is the participation of the party in the suit who has not been impleaded by the plaintiff initially. By impleadment of that party neither important aspect of the trial nor ancillary proceedings is decided. Such order even directly does not affect the valuable right of the plaintiff. Merely because the plaintiff has to fight the case against a party unwillingly or that it may to some extent widen the controversy in the suit, that would not mean that his valuable right is directly affected. We find ourselves in agreement with the well considered opinion of the Madras High Court that by addition of a party rights of the parties in any manner are not decided nor the proceedings are determined finally. Where the trial Judge allows any impleadment of the party in a given case at best some right of the plaintiff would be affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff has full right to contest the defence that would be set up by the added party and succeed in the suit. By such

1. 2006(2) MhLJ 483

order, there is no determination of any right or liability nor does it Page 434 take away substantial right of the plaintiff and, therefore, an order of addition of a party shall not fall within the meaning of the word 'judgment' under clause 15 of the Letters Patent.

23. The question of impleadment of the party has to be decided on the touch stone of the Order 1 Rule 10 of the Code of Civil Procedure which provides that only a necessary or proper party may be added. Rule 10(2) confers a discretion upon the court to meet every case of defective parties. The necessary party is one without whom no order can be made effectively. In the absence of necessary party, the suit must fail. On the other hand, a proper party is a party in whose absence an effective order can be made but whose presence enables the court to decide the question involved in the proceedings finally and effectually. As observed by the Supreme Court in Shah Babulal Khimji, the trial Judge of the High Court with vast experience of various branches of law occupying the very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Any discretion exercised by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment. When an application for impleadment of the party in the suit is made before the trial Judge of the High Court, obviously, such application is considered by the trial Judge on the touch stone of Order 1 Rule 10 as to whether such party is a necessary or proper party in a suit. The trial Judge exercises his judicial discretion having regard to the facts and circumstances of the case. In our considered view, the order passed by the trial Judge of the High Court directing addition of the party, even if it be assumed that it may cause some inconvenience or prejudice to the plaintiff cannot be held to be 'judgment' for the purposes of clause 15 of the Letters Patent. Such order is neither intermediary nor interlocutory judgment as cataloged by the Supreme Court in the case of Shah Babulal Khimji. The order of addition of a party cannot be said to be causing substantial injustice nor is such order a matter of moment deciding directly valuable rights of the parties."

4 On this ground the appeal is liable to be dismissed.

5 Moreover, even on merits appellant has no case. Appellant has filed a suit seeking an order and decree declaring appellant as exclusive owners of the suit lands and claimed to be in possession thereof. Appellant is also praying for a decree of declaration that by virtue of Section 24(2) of the Right to Fair Compensation Act 2013, the acquisition of suit property has lapsed, inspite of passing of award and permanent injunction. Respondent

no.1 had taken out the chamber summons stating that pursuant to an auction notice issued by the Court Receiver for public auction of land admeasuring 664 acres respondent no.1 submitted its bid to the court receiver. The offer of one Mr. K. Lalchand who was the promoter of respondent no.1 was accepted by the court and the said Mr. K. Lalchand deposited Rs.13,50,000/- with the Court Receiver. On the death of Mr. K. Lalchand, the court authorised the Court Receiver to execute one or more conveyances in favour of nominees of M/s. Veekaylal Company and legal heirs of Mr. K Lalchand. The court receiver accordingly executed a conveyance deed in respect of the remaining portion of the land that had been sold in favour of Mr. K. Lalchand by the court receiver.

6 Mr. Reddy submitted that appellant is claiming right in respect of the suit property through a party who has occupied the property and if the prayers as sought in the plaint are granted, rights of respondent no.1 will be seriously prejudiced and, therefore, Learned Single Judge was correct in allowing the chamber summons. The Learned Single Judge has noted that appellant do not dispute the interest of respondent no.1 but state that respondent no.1 only has commercial interest. In our view, that would not really matter because if the plaint is allowed as prayed for in favour of appellant, certainly the interest of respondent no.1 would be prejudiced. In the circumstances, even on merits we find nothing wrong in the order passed by the Learned Single Judge.

7 Mr. Tilak states that the land which is in possession of appellant does

not form part of 270 acres of which conveyance has been executed in faovur of respondent no.1 by the court receiver but agrees that for the remaining lands there are proceedings pending filed by respondent no.1 seeking conveyance of entire property. It is all the more reason for respondent no.1, if not made party to the suit grave prejudice will be caused to respondent no.1.

8 In the circumstances, appeal dismissed with costs. Appellant to pay an amount of Rs.50,000/- as cost to respondent no.1 by cheque drawn in favour of advocate on record for respondent no.1 within two weeks from today. If the said amount is not so paid, the suit will stand dismissed without further reference to court.

(RAJESH S PATIL, J.)

(K.R. SHRIRAM, J.)