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

WRIT PETITION NO. 16113 OF 2023

Mr. Keshavram Santram Jaiswal

.. Petitioner

Versus

Mumbai Metropolitan Regional Development
Authority and Ors.

.. Respondents

-
- Mr. Induprakash Tripathi a/w. Mr. Virendra Tripathi, Advocates for
Petitioner.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 02, 2024.

P.C.:

1. Heard Mr. Tripathi, learned Advocate for Petitioner who is the original Plaintiff in Suit No.2613 of 2019 filed in the Bombay City Civil Court at Mumbai.

2. Mr. Tripathi would contend that the impugned order dated 05.09.2023 has been passed in Chamber Summons No.55 of 2023 by the learned Trial Court. Chamber Summons was filed by the Plaintiff seeking an amendment to the plaint. Amendment was two fold; namely impleadment of Smt. Geeta Shobharam Jaiswal as Defendant No.4 in the Suit and including a declaratory prayer in respect of the suit structure/room.

3. Originally, the Suit was filed only against the Defendant Nos.1 to 3 (Government Bodies) for injunction and grant of alternate

accommodation in view of the suit structure being taken over and demolished by Defendant Nos.1 to 3. I have perused the prayer clauses in the plaint which are in paragraph No.28 thereof on page Nos.51 and 52 of the Writ Petition.

4. Mr. Tripathi in all fairness would point out that between the Petitioner and the proposed Defendant No.4 who is the Petitioner's sister-in-law, Suit No.1577 of 2018 was filed earlier by the Petitioner in the Bombay City Civil Court which is still pending. That Suit was for simplicitor injunction since the sister-in-law had staked her claim and right to the suit structure/room belonging to Petitioner. He would submit that on 05.07.2018 in that particular Suit, ad-interim relief was granted by the Court after recording the statement of the proposed Defendant No.4 herself that possession of the suit room/structure was with the Plaintiff i.e. Petitioner before me and it was so admitted by her. I have seen the order dated 05.07.2018 which is appended to the Petition.

5. Mr. Tripathi would submit that subsequent thereto MMRDA took over possession of the suit structure/room and demolished the same all together. He would fairly submit that in the meanwhile the proposed Defendant No.4 approached the MMRDA and once again staked a claim to the suit structure/room. On merits he would submit that the Petitioner and his elder brother (who is since deceased) had

two separate rooms and during the lifetime of the elder brother, he had sold his room and shifted to Kandivali alongwith his wife Defendant No.4 and thereafter expired in the interregnum. Despite these strong facts, Defendant No.4 has falsely staked a claim to the structure/room belonging to the Petitioner. Ideally, I would have asked the Petitioner to file a separate Suit for declaration also, but that would result in further multiplicity of litigation and proceedings. In order to avoid multifarious proceedings between the same parties, it would be trite to direct that the proposed Defendant No.4 be impleaded in the Suit alongwith the necessary amendment for declaratory relief sought for by the Plaintiff.

6. Mr. Tripathi has drawn my attention to Schedule-A which is the proposed amendment in S.C. Suit No.2613 of 2019 which is at page Nos.32 to 34 to the Writ Petition. There is a specific relief seeking declaration of right, title and entitlement on occupation of the suit room/structure as also entitlement for permanent alternative accommodation from MMRDA.

7. Hence, in the interest of justice, the impugned order is therefore not sustainable. Chamber Summons for impleadment and including the declaratory relief ought to have been allowed by the Trial Court. The impugned order dated 05.09.2023 thus stands quashed and set aside.

8. Chamber Summons No.55 of 2023 stands allowed in terms of the amendment at Schedule-A on page Nos.32 to 33. Amendment will be permitted to be carried out by the Plaintiff within a period of three weeks from today by the Trial Court. Once the amendment is carried out, appropriate Court fees shall be paid which the Petitioner has undertaken to pay after the proposed amendment as per Schedule-A is carried out and thereafter the Suit shall be proceeded with strictly in accordance with law.

9. With the above directions, Writ Petition stands allowed and disposed.

[MILIND N. JADHAV, J.]

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