

Ajay

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

WRIT PETITION NO. 8148 OF 2024

Vivek Omprakash Abrol

.. Petitioner

Versus

Daksha Ashok Lalwani and Anr.

.. Respondents

-
- Mr. Vikrant Parashurami, Advocate for Petitioner.
 - Mr. V.R. Tripathi, Advocate for Respondent No.1.
-

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 06, 2024.

P.C.:

1. Heard Mr. Parashurami, Advocate for Petitioner and Mr. Tripathi, learned Advocate for Respondent No.1.

2. By virtue of the impugned order dated 11.12.2023 which is appended at Exhibit “A” page No.22 passed in Chamber Summons No.870 of 2023, the impleadment of the Petitioner to the Suit proceedings is rejected by the Trial Court. Being aggrieved, the said order is challenged in this Court.

3. Briefly stated, the Suit is filed by Respondent No.1 before the Trial Court to challenge a statutory process / notice issued by the Municipal Corporation of Greater Mumbai (for short “**MCGM**”) under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “**MMC Act**”) in respect of a structure which is nomenclatured as

garage. This structure is used by Respondent No.1. According to the Petitioner, he is entitled to 2/3rd share in the land, on which the said garage is standing.

4. Mr. Parashurami, learned Advocate for Petitioner seeking impleadment in the Suit proceedings filed by Respondent No.1 would submit that in view of a substantive legal right of the Writ Petitioner in the land on which the said garage is standing and in respect of which a statutory notice has been issued, he derives a right to be impleaded as a proper and necessary party to the Suit proceedings.

5. He would refer to and rely upon the decision of the Division Bench of this Court in the case of *Ashok Babulal Avasthi Vs. Munna Nazimuddin Khan and Anr.*¹ and the decision of the Supreme Court dated 12.02.2024 in SLP Diary No.5545 of 2024. In support of his submissions, he would submit that even a co-owner having a substantial right on which the structure is standing would derive right of impleadment.

6. *PER CONTRA*, Mr. Tripathi, learned Advocate for Respondent No.1 who is the Plaintiff before the Trial Court would vehemently argue and oppose the present Writ Petition. According to him, the present Writ Petition is not maintainable at all in view of the fact that the Petitioner who seeks impleadment has no nexus

¹ WP No.6933 of 2022 decided on 29.11.2023.

whatsoever with the Suit structure i.e. the garage. According to him, the said garage exclusively belongs to Respondent No.1. He would submit that the Petitioner is not the landlord of the said garage and therefore the decision of this Court which has been referred to and alluded to herein above by me would not *ipso facto* apply to the facts and circumstances of the present case. Though in his usual fairness, he would submit that Respondent No.1 is entitled to 1/8th share in the land on which the said garage is standing and would also agree that a partition Suit is pending between the parties, resultantly leaving the entire property as undivided property.

7. He would next submit that a decision of this Court in the case of *Rajnitai Srichand Lulla Vs. Municipal Corporation of Greater Mumbai and Anr.*² if seen by the Court may apply to the present facts. Copy of the said order is placed before me and he has drawn my attention to the facts of that case and the decision taken by me therein which is elucidated in paragraph Nos.8 and 9 of the order. He would submit that in that case, this Court has held that if a person who seeks impleadment is not the landlord of the property or if he does not have any nexus with the subject property in respect of which a statutory notice has been issued, then impleadment has been refused. I have perused the said order placed before me. I find that the said decision is apt and clear in the facts and circumstances of that case where an

² WP No.3479 of 2016 dated 12.07.2024

impleadment Application was sought for by a neighbour, rather an adjacent owner.

8. However in the present case, the nexus of the parties *qua* the Suit properties is inherent considering that the partition Suit is still pending and the share of the parties are still undecided in respect of the land in which the Plaintiff claims 1/8th share whereas the Petitioner seeking impleadment claims 2/3rd share. There is a clear nexus of Petitioner to the Suit property, atleast the land borne out from the facts and circumstances of the present case. In that view of the matter, the facts in the present case stand fully covered by the decision of the Division Bench of this Court in the case of *Ashok Babulal Avasthi* (*first supra*) and upheld by the Supreme Court. What is significant to be noted is that the Chamber Summons filed by the Petitioner seeking impleadment is filed under Order I Rule 10 of the Code of Civil Procedure, 1908 (for short “CPC”) and the provisions of Order I Rule 10(2) of the CPC have been duly encapsulated by the Division Bench of this Court while determining such a nexus of a party to the Suit property *qua* the power of the Court under the said statutory provision.

9. In view of the above observations and findings, I am not inclined to accept the submissions made by Mr. Tripathi, learned Advocate for Respondent No.1 and the same stand rejected. Resultantly, the impugned order dated 11.12.2023 is quashed and set

aside.

10. Chamber Summons No.870 of 2023 filed by the Petitioner stands allowed. Plaintiff before the Trial Court is directed to carry out the amendment of impleadment of the Petitioner as Defendant No.2 to the Suit proceedings within a period of two weeks from today. The learned Trial Court shall permit the Advocate for the Plaintiff to carry out the said amendment in accordance with law. Thereafter the Suit shall proceed strictly on its own merits and on the basis of evidence that shall be led by the Plaintiff as also the evidence in rebuttal that shall be led by Defendant Nos.1 and 2 in the Suit proceedings.

11. It is clarified that this Court has not opined on any merits of the matter since this Court at an interim stage cannot do so. Hence, all contentions of the Plaintiff before the Trial Court in so far as the impugned notice structure is concerned are expressly kept open since it has been vehemently argued before me by the learned Advocate for the Plaintiff that the Suit structure exclusively belongs to the Plaintiff. He has also stated before me that he has been paying the assessment and the taxes as also all statutory charges pertaining to the Suit structure and is the exclusive owner thereof. Be that as it may, all contentions of the Plaintiff are expressly kept open, to be agitated before the learned Trial Court in the Suit proceedings.

12. It is directed that considering the issue involved in the present case as also the fact that a structure i.e. the Suit property is standing on the land and part being demolished, the learned Trial Court is directed by this Court to decide the Suit proceedings as expeditiously as possible and preferably within a period of one year from today.

13. Parties and the learned Trial Court are directed to act on an server copy of this order.

14. It is directed that parties shall not take any unnecessary adjournments and the Trial Court shall grant adjournment to parties only if it is utmost necessary.

15. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

16. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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