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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10256 OF 2024

Suhas Govind Lotlikar

Petitioner (Orig.
.. Plaintiff)

Versus

Municipal Corporation of Greater Bombay and
Ors.

Respondents
.. (Orig. Defendants)

-
- Mr. Mahesh Chandanshiv, Advocate for Petitioner.
 - Mr. Om Suryawanshi, Advocate for Respondent No.1 – BMC.
-

CORAM : MILIND N. JADHAV, J.

DATE : JULY 30, 2024.

P.C.:

1. Heard Mr. Chandanshiv, learned Advocate for Petitioner and Mr. Suryawanshi, learned Advocate for Respondent No.1 – BMC.

2. By virtue of the impugned orders dated 04.02.2021 and 11.09.2023, the Applications filed by the Plaintiff stand rejected by the learned Trial Court. Both orders are impugned in the present Writ Petition before me.

3. Order dated 04.02.2021 has been passed by the learned Trial Court in Application filed by Plaintiff himself, *inter alia*, seeking to bring on record legal heirs of deceased Defendant No.2. The said Chamber Summons has been allowed but the Plaintiff has refused to execute and implement the order and carry out the amendment in the

Suit proceedings. One of the grievance expressed by the Plaintiff is that the Plaintiff has knowledge of the fact that Defendant No.2 during her lifetime had transferred her entire share to Defendant No.4. Defendant No.4 is the sole Defendant who is now contesting the Suit proceedings *qua* Plaintiff's claim. Defendant No.1 is the Corporation. Defendant Nos.2 to 4 are private parties.

4. If the aforesaid submission of the learned Advocate for Plaintiff is true, then there should be no impediment to allow the legal heirs of Defendant No.2 to be brought on record and they can clarify the above position.

5. Once it is seen that the entire contest in the Suit proceedings is with respect to the auction purchase certificate granted in the names of the Plaintiff, Defendant No.2, Defendant No.3 and Defendant No.4, the Plaintiff's Suit will have to be determined as it has been filed. The Suit is filed in the year 2007. Today, Plaintiff cannot choose to delete Defendant No.2 or cannot defy the order dated 04.02.2021 passed by the learned Trial Court in his own Application. In fact, that order has been passed in order to protect the interest of Plaintiff, since the Plaintiff's case is that Defendant No.2 has transferred her entire share in favour of Defendant No.4.

6. I find no reason to interfere with the impugned order dated 11.09.2023 which has been correctly passed by the learned Trial Court.

Unless and until there is effective compliance of the order dated 04.02.2021. The learned Trial Court has considered the case of Plaintiff correctly and has infact granted liberty to the Plaintiff to file an appropriate Chamber Summons thereafter for seeking deletion of the names of the Defendants which are not suitable to the Plaintiff for any reason whatsoever. Once that liberty is also granted, there should be no cause of action for the Plaintiff.

7. I am not inclined to interfere with the impugned order dated 11.09.2023 which is a reasoned and cogent order.

8. Plaintiff is directed by this Court to comply with both the aforesaid impugned orders giving liberty to the Plaintiff to take out an appropriate Chamber Summons for seeking the relief of deletion of the Defendants which are not conducive to the interest of Plaintiff thereafter.

9. While sustaining both the impugned orders, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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