

Mr. Roseline Nadar, for Petitioner.
Mr. Ajit S. Hodage, for Respondent Nos.1 and 2.

DATE : 27 FEBRUARY 2025

1. Heard the learned Counsel for the parties.
2. The Petitioner – Defendant No.1 takes exception to an order dated 6 July 2024 passed by the learned Judge, City Civil Court, Greater Mumbai, in Chamber Summons No.2303 of 2023 in Short Cause Suit No.955 of 2014, whereby Chamber Summons taken out by the Defendant No.1 to amend the plaint and also implead Respondent Nos.4 to 6 as party Defendants to the suit came to be dismissed.
3. Respondent Nos.1 and 2 have instituted a suit for declaration that they are the joint owners of the Flat No.101, Siddhi Vinayak Shree Kripa, Shivaji Park, Dadar, Mumbai (the suit flat) along with Defendant No.1, and for partition and separate possession of the suit flat. The Plaintiffs claimed that Aneesha Manmohan Sahani, wife of Plaintiff No.1 and the mother of Plaintiff No.2, was the sister of Defendant No.1. Late Aneesha, Defendant No.1 and

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Lalita, were the co-tenants of a tenanted premises situated at Shri Krupa, 129, Dr. M.B.Raut Marg, Shivaji Park, Dadar, Mumbai (old premises), in lieu of which, upon the redevelopment carried out by the Defendant No.2, the suit flat came to be allotted. Late Aneesha was, thus, co-owner of the suit flat. After the demise of Aneesha, the Plaintiffs demanded their share in the suit flat. As the Defendant No.1 declined to give share of the Plaintiffs, the suit for declaration, partition and the consequential reliefs.

4. Defendant No.1 took out the Chamber Summons asserting, inter alia, that after the Plaintiffs led their evidence, Defendant No.1 learnt that on 27 April 2017 Defendant No.2 sold the suit flat to Respondent Nos.5 and 6. For the acquisition of the suit flat, the Respondent Nos.5 and 6 had obtained loan from Respondent No.4. Respondent Nos.5 and 6 committed default in the repayment of the loan. Eventually, Respondent No.4 obtained possession of the suit flat by resorting to the provisions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002). Defendant No.1 assailed the said action by filing an application under Section 17 of the Act, 2002. However, the said application came to be rejected. Proceedings are sub-judice before the Debt Recovery Appellate Tribunal. It is, therefore, necessary to amend the written statement of the Defendant No.1 and also implead Respondent Nos.4 to 6 as party Defendants to the suit.

5. By the impugned order, the learned Judge, City Civil Judge, was persuaded to dismiss the Chamber Summons observing, inter alia, that the suit was for partition. The Plaintiffs were the dominus litis. The persons, who were the necessary parties to a suit for partition, have already been arrayed as parties to the suit. The alleged subsequent events and proceedings before the authorities under the SARFAESI Act, 2002 were not necessary for the determination of the real question in controversy.

6. The Plaintiffs seek partition and separate possession of their share in the property which has allegedly been allotted, upon redevelopment of the premises, of which the predecessor in title of the Plaintiffs and Defendant No.1 were the co-tenants. Dispute sought to be raised by Defendant No.1 in respect of the alleged transaction by Defendant No.2 with Respondent Nos.5 and 6 and the various proceedings which allegedly ensued in relation to the said transaction, are not germane to the matter in controversy.

7. Defendant No.1 has contested the claim of the Plaintiffs. If Defendant No.1 intends to assail the alleged transaction between Defendant No.2 and Respondent Nos.4 to 6, Defendant No.1 will have to work out his remedies by taking out independent proceedings. The instant suit cannot be converted into an action to assail the transactions between Defendant No.2 and Respondent Nos.4 to 6, or for that matter, the action initiated by Respondent No.4 against Respondent Nos.5 and 6, especially when the plaintiffs, who are

the dominus litis, do not profess to implead Respondent Nos.4 to 6 as party Defendants to the suit.

8. From the aforesaid standpoint, the learned Judge, City Civil Court, was justified in declining to allow the Defendant No.1 to amend the written statement, and direct the Plaintiffs to implead Respondent Nos.4 to 6 as party Defendants to the suit. Hence, no interference is warranted in the impugned order.

9. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)