

(1984) 11 BOM CK 0056

In the Bombay High Court

Case No : Civil Revision Application No. 271 of 1984

Kantaben Kalidas

APPELLANT

Vs

Parsi Dairy Farms and Others

RESPONDENT

Date of Decision : 06-11-1984

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 351, 448
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : (1985) 2 BomCR 353 : (1985) MhLj 220

Hon'ble Judges : B.A. Masodkar, J

Bench : Single Bench

Advocate : A.K. Abhyankar, for K.J. Abhyankar, for the Appellant; C.R. Dalvi and M.V. Shetty, P.M.P. D" Mello and P.B. Karhadkar for respondents Nos. 2, 3 and 4, for the Respondent

Judgement

B.A. Masodkar, J.—This civil revision application questions the order made on December 13, 1983, rejecting the application of the revision-applicant for joinder as the defendant in the suit, being Long Cause Suit No. 6881 of 1982. By that order, the revision-applicant's Chamber Summons in that regard has been dismissed.

2. The admitted positions are that the suit is filed claiming relief of injunction against the Bombay Municipal Corporation. That Corporation issues notices u/s 351 of the Bombay Municipal Corporation Act, 1888 (hereinafter referred to as "the Act") followed by section 488 of the Act with regard to a shed said to have been put up at the rear side of the building in occupation of the plaintiff, situate at Princess Street in Bombay. The said premises are held by the plaintiff as lessee. The property belongs to the revision-applicant, she having purchased the same in the year 1944. Thus, the revision applicant is the landlady while the plaintiff is the tenant. As the notices were issued under the provisions of the Act and were addressed to the tenant, the suit was filed. By the Chamber Summons taken out, the landlady sought joinder as the defendant on the basis that she has every interest in the suit and further that she should be arraigned as a proper

party.

3. By the impugned order, the Court below held otherwise.

4. In this Court, the revision-applicant claimed that there was ample power in the Court to permit such a joinder, particularly when the property vested in her by reason of the title. It is contended that such a person should have the opportunity of being arraigned as a proper party in the suit itself. Otherwise, she will not be in a position to protect her interest. As against this, the learned Counsel appearing for the original plaintiff submitted that such joinder cannot be directed, for the presence of the landlady was neither necessary nor expedient to such an injunction suit. In the submission of the learned Counsel, the character of the suit is simple one and the cause of action arises exclusively between the plaintiff and the Corporation. That cause of action arose because of the notices issued by the Corporation and not by any act of the landlady. The presence of the landlady in such an action would convert the suit itself into a title suit.

5. Now, as far as the power of the Court to direct joinder of parties is concerned, Order 1, Rule 10(2) of the Code is an ample answer. That does enable the Court to direct joinder of the parties. See *Virbhadrappa Shilvani v. Shakabai*, 41 Bom.L.R. 249. Such a joinder ordinarily against the Will of the plaintiff, is not ordered, but if necessary in the interest of justice, the same can nonetheless be directed. This course has been indicated by the earlier judgments of the learned Single Judges of this Court rendered in Civil Revision Application No. 938 of 1964, decided on June 30, 1966 by Chandrachud, J., and in Appeal No. 587 of 1981, decided on November 25, 1983 by (Rege, J.). In both these decisions, the matters were concerning the relief of injunction against the Municipal Corporation. To the same effect is a judgment of this Court of another learned Single Judge in Civil Revision Application No. 901 of 1968, decided on January 17, 1969 by Vaidya, J. These decisions indicate that owner of a property with regard to which an injunction suit of such a kind is filed could be impleaded as the proper party upon the application of such owner, notwithstanding the fact that the suit was for injunction against the Municipal Corporation.

6. The ratio of these decisions is not in any manner in conflict with decision of the Division Bench in *Virbhadrappa Shilvani v. Shekabai* 41 Bom.L.R. 249. Even there, the Division Bench observed that the powers of the Court under Order 1, Rule 10(2) of the Code were wide enough to add parties to a suit or proceedings. However, that power will not be exercised merely because a person claims to be interested in the suit without the concurrence of the plaintiff. This ratio does not mean that the presence of the party by reason of the admitted interest in the property, if necessary, would not be permitted or that such a joinder only because the plaintiff opposes should be refused. The decision in *Jivanlal Damodardas v. Narayan* 73 Bom.L.R. 814 on which reliance is placed, does not affect this position. On the other hand, it lays down the kind of matters when a necessary party can be impleaded. In a suit relating to the property if such a party has direct interest in the subject matter of the litigation, such a party could

claim to be impleaded even on the ratio of the judgment.

7. These precedents clearly show that a party seeking such a joinder as a proper party will have to prima facie establish that such a party has interest in the subject-matter of the litigation and as such should be before the Court. The simple test in such controversy would be as to whether the presence of such a party is appropriate in view of the subject matter in adjudication. If the answer be in the affirmative, joinder can be permitted. By reason of direct interest in the subject-matter or even by reason of eventual reliefs sought, such a test would be answered. Power being there, it is all a matter of appreciation of the controversy in issue and its possible ramifications.

8. The last limb of sub-rule (2) of Rule 10 of Order 1 of the Code relates to the party whose "presence before the Court may be necessary" in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit. This part is wide enough to take in the persons who are shown to have direct interest in the property for the protection of which reliefs of injunctions are sought. Where the interest in the property is or would be in issue, the contender claiming such an interest in property were found to be so entitled to join as proper parties. See *Bhagwanti v. Custodian General* AIR 1976 J. & K. 29 and *Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orissa and Others*, . It is not compulsive under the rule to show always that the presence of the party applying to be joined is necessary for the determination of the questions as between the parties already on the record. The rule is clearly enabling and the Court under it can permit addition even of those whose presence appears appropriate in view of the final determination likely to be made of the questions that arise between the parties on record.

9. By this standard, the claim of the revision-applicant does not admit any doubt.

10. The premises in the occupation of the plaintiff belong to the revision-applicant who is the landlady. The plaintiff, thus, has merely a derivative title by reason of a lease. The landlady, thus, is possessed of the property and also all the reversionary rights of actual possession upon termination of lease. No doubt, the cause of action that led to the filing of the suit was the issuance of the notices by the Municipal Corporation with regard to the property in possession of the tenant. Those notices issued by the Corporation to the tenant under sections 351 and 488 of the Act purport to style him as the owner of the property, probably to indicate that he is the owner of the unauthorised construction. The notice u/s 488 of the Act is unmistakable terms held out that by a stipulated time, the authorities of the Municipal Corporation would enter upon the premises so as to remove the construction in dispute. The earlier notice u/s 351 of the Act asserted that the execution of the work on the premises was unauthorised one. Both under the provisions of sections 351 and 488 of the Act in the context of the present controversy, the notices issued by the Municipal Corporation, though addressed to the plaintiff, touched the property of the revision-applicant. Section 351 of the Act deals with the proceedings in respect of buildings or work done or

commenced contrary to section 347 of the Act, while section 488 of the Act enables the Commissioner or General Manager to enter upon the property for the purposes of inspection, survey or execution of necessary work. The impact of both these provisions is clearly upon the property and while deciding the questions of proper party, this impact should receive the central consideration. If Corporation were to enter, by reason of law, surely, it would enter upon the premises of the revision applicant in possession of the tenant. Question at issue would be the condition of the construction, its erection, continuance or demolition. With all these, the admitted owner would be concerned. This in substance is the impact of the Corporation notices to the tenant.

11. This impact of the notices is not merely upon the person but in substance and truly upon the property. The intended action by the Municipal Corporation would involve entry, by reason of legal authority upon the property and even removal of the alleged unauthorised construction.

12. As the property, admittedly, belonged with all reversionary rights of possession to the real owner, it cannot be doubted that the revision-applicant will have interest even in such a suit where the question of authorised or unauthorised construction was in issue. At any rate, such a person being the owner and being entitled to maintain the identity of the property free from damage would have clear entitlement to be impleaded as a proper party. Such a person can well assist the process of adjudication which would involve the question as to whether a particular construction was or was not authorised within the meaning of the Act. It is for the protection of the property, and basically relying upon the derivative title by reason of the lease that the plaintiff gets the cause of action to file such a suit. In such a suit, if the owner, the landlady of the property, seeks joinder as a proper party, hardly any exception can be taken. On the other hand, the presence of such a party would be proper and, in a given set of circumstances, depending upon the controversy, may even be necessary.

13. That being the plain position, the impugned order is unsustainable. The Chamber Summons for joinder by the revision-applicant as a proper party will have to be allowed. Accordingly, the impugned order is set aside and Chamber Summons No. 45 of 1983 is allowed in which rule is made absolute. The revision applicant be arraigned as defendant No. 4 in Long Cause Suit No. 6881 of 1982.

14. Rule absolute. The revision-applicant to get costs from respondent No. 1.