

(1996) 10 BOM CK 0010

In the Bombay High Court

Case No : Civil Revision Application No. 667 of 1996

Venus Housing Enterprises

APPELLANT

Vs

Parmy Manufactory Co. Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 17-10-1996

Acts Referred:

Mumbai Municipal Corporation Act, 1888 — Section 351

Citation : (1997) 1 ALLMR 435 : (1997) 99 BOMLR 364

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.M. Lodha, J.—Rule. Returnable forthwith. Mr. Narula waives service for respondent No. 1. Mr. Reis waives service for respondent No. 2.

2. By consent, revision application heard finally at this stage.

3. Legality and correctness of the order passed by the City Civil Court on 29/6/1996 rejecting chamber summons of the present petitioner for its impleadment in L.C. Suit No. 307 of 1996 is impugned in the present revision application.

4. The respondent No. 1 herein namely Parmy Manufactory Pvt. Ltd. filed the suit in the Court of City Civil Court against the respondent No. 2 herein i.e. the Municipal Corporation of Greater Bombay impleading it as a sole defendant. In the said suit the plaintiff claimed that he was owner of the structure admeasuring 6952 sq. metres situated at final plot No. 874 of Veer Savarkar Marg, Dadar, Bombay and the said structure is in actual physical possession, use and occupation of the plaintiff for the last 45 years. According to the plaintiff the plaintiff could not repair the suit structure in pursuance of the permission granted by the Bombay Municipal Corporation in the year 1984 and therefore again in the month of September 1993 the plaintiff applied for permission to renovate the suit structure. The defendant granted their no objection for carrying

out renovation work on the conditions set out in that permission. According to the plaintiff pursuant to that permission it started renovating the suit structure in or about the month of December 1984 and at that time the present petitioner namely M/s. Venus Housing Enterprises who claimed to be landlord of the property in question filed a petition before this Court and obtained an ad-interim order restraining the plaintiff from carrying on any alteration or continuing any construction work in the suit structure, the plaintiff averred in the plaint that this Court on 14.2.1995 has vacated the ad-interim relief and permitted the plaintiff to carry out construction work as permitted by the defendant Corporation. Thus according to the plaintiff the renovation work continued. On 24.4.1995 the defendant Bombay Municipal Corporation issued a notice to the Architect of the plaintiff which was received on 26.4.1995 stating that the plaintiffs had carried out the repair beyond the permission granted on 8.10.1993 and thereby the Corporation revoked the permission. The plaintiff has prayed in the suit that the notice dated 24.4.1995 issued by the defendants and revocation of permission be declared illegal invalid null and void and not binding on the plaintiff and that the defendant Corporation be restrained by a temporary order and injunction from taking any steps or action pursuant to the notice dated 24.4.1995.

5. In the said suit the present petitioner M/s. Venus Housing Enterprises took out chamber summons praying therein that it be joined as party defendant in the suit. According to the petitioner it is owner of the property bearing final plot No. 874 admeasuring 6952 sq. mtrs. Veer Savarkar Marg T.P.S. No. IV Mahim Andheri since the said property was purchased by the petitioner from one Antonio D'Silva Trust under a deed of conveyance dated 25.4.1981. According to the petitioner, the plaintiffs were the occupant of the structure standing on the portion of the said property in respect of which notice dated 24.4.1995 was issued. Various other facts about removal of the non-conforming structure and filing of the writ petition by the applicant/petitioner before this Court have been stated. According to the petitioner therefore, it was necessary and proper party for complete and effectual disposal of the suit and, therefore, deserves to be impleaded as defendant.

7. The said chamber summons was contested by the plaintiff and the trial-Court by the impugned order dated 29/6/1996 dismissed the said chamber summons.

8. There is no dispute that, the present petitioner is the owner of the plot No. 874 of Veer Savarkar Marg admeasuring 6952 sq. mtrs. According to the plaintiff - respondent No. 1 it is lessee on the part of the said land and it has raised super structure and was the owner of the structure. According to the plaintiff. It is also paying ground rent to the concerned authorities. The averment of the plaintiff that it is owner of the disputed land is disputed by the present petitioner and it is stated that in the writ petition tiled before this Court it has set out a plea that the claim of the plaintiff that it was owner of the structure was false. Be that as it may, the fact remains that the petitioner is the owner of the land in question and as regards the ownership of the structure there is dispute between the parties.

In the Suit filed by the plaintiff the notice dated 24.4.1995 issued by the defendant Municipal Corporation, of Greater Bombay is challenged. The question is whether in that suit the petitioner is necessary party or proper party or not and whether the trial Court was justified in rejecting the chamber summons taken out by the plaintiff herein or not.

9. The necessary party is one without whose presence no relief can be granted and the defect of non-impleadment of necessary party is always fatal and on that ground alone the suit is liable to be dismissed. A proper party is one whose presence is necessary for complete and effectual adjudication of the dispute though he relief is sought against that party.

10. Recently, the Apex Court in M/s. Aliji Monoji and Co. Vs. Lalji Mavji and others, was seized of the question whether the landlord is a necessary or proper party to the suit of perpetual injunction for demolition of demised building and the Apex Court held thus :

The question is :Whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of demised building? The landlord has a direct and substantial interest in the demised building before the demolition of which notice u/s 351 was issued. In the event of its demolition, his rights would materially be affected. His right title and interest in the property demised to the tenant or licensee would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent of the landlord lessor. But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those circumstances the landlord necessarily is a proper party though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from demolition of the building. Under those circumstances the question of the commercial interest would not arise. In Ramesh Hirachand Kundanmal's case (supra) this Court had pointed out in para 18 of the judgment that the notice did not relate to the structure but to two chattels. Original lessee from the landlord had interest in that property. Under these circumstances, it was held that the second respondent has no direct interest in the subject matter of the litigation and the addition thereof would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which was required to be adjudicated and settled. It is true as pointed out by Shri Nariman that in para 14 this Court in that case had pointed out that what makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved that would only make him a necessary witness it is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which make it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled therefore must be a question in the action which cannot be effectually

and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is not necessary for the purpose of this case to go into the wider question whether witness can be a proper and necessary party when the witness has a commercial interest. This Court in *New Redbank Tea Co. Pvt. Ltd. Vs. Kumkum Mittal and Others*, has pointed out that respondent 11 who filed a suit for specific performance in the High Court was sought to come on record in the suit in which he had no direct interest in the pending matter. Under those circumstance this Court had held that respondent neither necessary nor proper party in the lease-hold interest involved in the suit. In *Union of India (UOI) and Another Vs. District Judge, Udhampur and Others*, the Union of India who ultimately had to bear the burden of payment of the compensation was held to be a necessary party under Order 1 Rule 10 CPC for determination of the compensation in respect of the acquired land. In *Bihar State Electricity Board Vs. State of Bihar and Others*, the same question was also reiterated and it was held that the Electricity Board was a person interested and also a necessary party. In *Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru*, similar question was answered holding that the respondent was a necessary party.

11. The Supreme Court has thus ruled that where a notice is given by the Municipal Corporation u/s 351 of the Municipal Corporation Act for demolition of a building in occupation of a tenant the landlord has a direct and substantial interest in the demised building and he was necessarily proper party. The Apex Court has held that the construction sought to be demolished by the Municipal Corporation may be with or without the consent of the landlord but the demolition would undoubtedly materially affect the right title and interest in the property of the landlord.

12. In my view, the decision of the Apex Court in *M/s. Aliji Mominji & Co's Case* is directly applicable to the facts of the present case where admittedly petitioner is Landlord of the final plot and he has direct and substantial interest in the property. Though there is dispute about the ownership of the structure, for the present purpose it would not make any difference because according to the plaintiff the structure is strong and the repairs carried out are in accordance with permission granted by the Bombay Municipal Corporation while according to the petitioner it is non-conforming structure. The interest of the landlord therefore in the subject matter of the dispute cannot be ignored.

13. Mr. Narula, the learned Counsel for respondent No. 1 sought to distinguish the aforesaid judgment by submitting that in the aforesaid case before the Apex Court the landlord had interest in the demised building whereas in the present case it cannot be said that the petitioner has any interest in the structure.

14. In my view, the distinction is superficial and without any substance. The aforesaid facts referred to by me above would clearly demonstrate that the landlord has interest direct and substantial in the property and the subject matter of the dispute.

15. Mr. Narula also submitted that the present case is covered by the judgment of the Apex Court in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, . I am afraid the said judgment cannot be said to be applicable to the present case and in M/s Aliji Momonji & Co."s case. The Apex Court has referred to Ramesh Hirachand Kundanmal"s case (supra) and observed that in that case the notice did not relate to the structure but to chattels and original lessee from, the landlord had no direct interest in the property. The facts in Ramesh Hircachand Kundanmal"s case are therefore entirely different.

16. Accordingly I hold that the petitioner has interest directly and substantially in the subject matter of the dispute and the property since he is owner of the final Plot No. 874 Veer Savarkar Marg Dadar Bombay and is therefore a proper party and deserves to be impleaded in the suit filed by the plaintiff.

17. The revision application is accordingly allowed. The order passed by the trial Court on 29/6/1996 and impugned in the present civil revision application is quashed and set aside. The Chamber summons taken out by the plaintiff accordingly stands allowed, The plaintiff should carry out necessary amendment for impleadment of petitioner in the suit within six weeks from today.

18. Rule is made absolute in aforesaid terms. No costs.

19. Certified copy expedited.