

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO.13458 OF 2017

1.Javed Akhtar Mirza & Anr.	...Petitioners
vs.	
1.Mrs.Bilshaba K.Gonsalves & Ors.	...Respondents
and	
Abubakar Abdul Sorathiya	...Proposed Respondent

Mr.G.V.Pandya, for the Petitioners.

Mr.P.M.Pande, for the Proposed Respondent.

CORAM : G.S.KULKARNI, J.

DATE : 15 February 2018

P.C. :

1. Leave to amend the cause title to number the last respondent-Abubakar Abdul Sorathiya as respondent no.2. Mr.Pandey appears for the said respondent and waives service.

2. Heard learned Counsel for the petitioners. Having perused the impugned order, it appears that respondent –Abubakar Abdul Sorathiya has been permitted to be impleaded as a party by allowing chamber summons no.1117 of 2017. Learned Counsel for the petitioners has pointed out that during the pendency of the suit there was an injunction granted by this Court by an order dated 24 November 2006 passed in Civil Application No.844 of 2006 in Appeal from Order no.634 of 2006. This order has been annexed at page 145

of the compilation. It is stated that the said appeal from order was subsequently allowed and the injunction was confirmed. From perusal of the impugned order, it appears that the case of respondent no.2 is that one Smt.Marjori Celina had executed deed of conveyance on 14 May 2010 in favour of respondent no.2 who is not even a party to the suit in question. In any event once the injunction was operating against the defendants, there was no question of defendants creating any third party rights or any other person claiming through the defendants. Thus, prima facie it appears that the applicant in the chamber summons no.1117 of 2017 could not have been impleaded as a party, overlooking the order passed by this Court.

3. In the above circumstances, the parties will have to be heard. Respondent no.2 is directed to file reply to this petition, if so desired, within two weeks from today with an advance copy to be served on the other side. In the meantime, there shall be ad-interim relief in terms of prayer clause (b) which reads thus:-

“(b) Pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to stay the proceeding of S.C.Suit No.520 of 2006 pending in C.R.no.4 of the Bombay City Civil Court Bombay.”

4. Stand over to 1 March 2018.

(G.S.KULKARNI, J.)