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Bharat
D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3611 OF 2019**

Inseeyah Shabbir Nuruddin
and Others

..... Petitioners.

V/s

Shri Bandu Laxman Phatak and Others

..... Respondents.

Mr. Mahendra J. Karnawat for the Petitioners.

Mr. Prabhakar M. Jadhav for Respondent No.4.

Mr. Nikhil R. Vidwans for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 15, 2019

P.C.:-

1] The order impugned is dated November 2, 2018 passed by the Small Causes Court in Special Civil Suit No.460 of 2004 thereby ordering transposition of Plaintiff Nos. 2 to 7 as Defendants.

2] The submissions are, the order impugned is not sustainable, as the suit itself was initiated by practicing fraud by Plaintiff No.1 with Power of Attorney Holder and as such, the suit should have been dismissed instead of ordering transposition. Further submission is, Plaintiff No.1 in Special Suit No. 460 of 2004 is already

impleaded as Defendant in Special Civil Suit No.664 of 2014 and as the issue raised in the present suit is already looked into and adjudicated between the parties before the Court of Civil Judge, Senior Division, order directing transposition is not sustainable.

3] While making the above submissions, in addition, it is claimed that apart from the fact that some of the parties in the subsequent suit are not parties to Special Civil Suit No. 460 of 2004, nature of relief claimed are also not similar or identical and that being so, the order impugned is not sustainable.

4] While countering the aforesaid submissions, learned Counsel for the Respondents submits that if prayers in the Plaint in Special Civil Suit No.664 of 2011 and Special Civil Suit No.460 of 2004 are compared, apart from the fact that prayers in Special Civil Suit No.460 of 2004 and in subsequent Special Civil Suit No.664 of 2014 are common, the parties are also similar. As such, dismissal is sought.

5] Considered the rival submissions.

6] The fact remains that in Special Civil Suit No.460 of 2004, claim is for declaration of Sale Deed dated 27/01/2003 as null and void so also for declaration that Plaintiff No.1 has become owner of the suit property by virtue of Sale Deed dated 28/05/2003. The said suit is claimed to have been filed on behalf of Plaintiff Nos. 2 to 7 through their Power of Attorney Holder. It appears that Plaintiff Nos. 2 to 7 have thereafter initiated Special Civil Suit No.664 of 2014 for the very same cause and also for some additional causes which are based on subsequent development after filing of Special Civil Suit No.460 of 2004. Application for transposition moved by Petitioners-Plaintiff Nos. 2 to 7 in Special Civil Suit No.460 of 2004 was already rejected and was not questioned.

7] In the aforesaid backdrop, considering the fact that Plaintiff Nos. 2 to 7 have already initiated subsequent Special Civil Suit No. 664 of 2014 for similar reliefs, as are claimed in Special Civil Suit No.460 of 2004, Plaintiff No.1 is given a status as that of Defendant in the later Special Civil Suit No.664 of 2014 and as the dispute raised is as regards very competency of Plaintiff Nos. 1 to 5 to

initiate Special Civil Suit No.460 of 2004, the order of transposition which is impugned in the Petition appears to be just and proper. Considering the issue raised by the Petitioners-Plaintiffs as regards competency of filing of Special Civil Suit No.460 of 2004 through the Power of Attorney Holder and the dispute raised therein, transposition order is very much justified.

8] In the aforesaid backdrop, in my opinion, no interference is warranted in the order impugned. Petition fails and the same stands dismissed.

9] Parties agree that they shall appear before the District Judge for clubbing both these suits together as the same pertain to same property and the parties are also similar.

(NITIN W. SAMBRE, J.)