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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2270 OF 2020

Bina Deegan alias Bina Cunningham
and alias Bina Gopi.

..... Petitioner.

V/s

Saras Gopi alias K. Saraswathi Amma
and Anr.

..... Respondents.

Mr. Girish Godbole a/w Ameya Gokhale a/w Salonee Kulkarni i/b
Shardul Amarchand Mangaldas & Co. for the Petitioner.

Mr. Aditya Pimple a/w Mr. Ranjit Shetty a/w Priyanka Shetty a/w
Jonathan Jose i/b Argus Partners for Respondent No.1.

Mr. Phiroze Merchant i/b Kanga & Co. for Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 15, 2021

P.C.:-

1] In a suit for declaration being S.C. Suit No. 1233 of 2017, in relation to immovable property, Petitioner/Plaintiff took out Chamber Summons No. 721 of 2019 under the provisions of Order 11 Rule 12 of CPC, which came to be rejected on 23/10/2019. As such, this

Petition.

2] Mr. Godbole, learned Counsel for the Petitioner/Plaintiff while inviting attention of this Court to the pleadings in S.C. Suit No. 1233 of 2017, particularly the prayer made therein, would urge that the Court below has committed an error of law in rejecting the Chamber Summons taken out, praying for issuance of order of discovery. According to him, since the trial in the suit has not commenced and to find out exact truth in view of rival contentions from the pleadings, it is necessary to exercise powers under Order 11 Rule 12 of CPC, thereby granting discovery. Further contention is, the Court is not powerless to grant discovery at the stage where evidence of the Plaintiff is being recorded. Relying on the judgment in the matters of *NTPC Ltd vs. Reliance Industries Ltd.*, reported in **(2015) 1 Bom CR 612** and *Bhagwani Devi Mohata Hospital vs. A.D.J. Rajgarh & Anr* reported in **AIR 2005 Raj 274**, he would urge that this is a fit case wherein Court should have exercised discretion vested in it. Further contention of Mr. Godbole is, Court erred in recording a reason that the stage of discovery is over and hence the application taken out for discovery is not maintainable.

3] Per contra, learned Counsel for Respondent No.1/Defendant No.1 would urge that the order impugned is just and proper as the Court has recorded correct reasons in support of prayer for rejection of the Chamber Summons. It is further claimed that the Petitioner is indulging in roving inquiry so as to collect evidence. Reply given to Chamber Summons that too on affidavit dealing with documents on which reliance is sought, is relied upon by learned Counsel for the Respondent No.1/Defendant No.1 for pursuing prayer for rejection of the Petition.

4] It is further claimed by the Respondent No.1/Defendant No.1 that the documents referred in clauses (b),(d),(h) and (i) are not in possession of Respondent No.1/Defendant No.1 and they are in possession of brother of the Petitioner/Plaintiff i.e. son of the Respondent No.1.

5] The contentions of the Petitioner/Plaintiff are resisted by the Respondent No.1/Defendant No.1 on affidavit and as such it is claimed that the object of moving the Chamber Summons is to delay

the proceedings.

6] I have considered rival submissions in the light of pleadings in the plaint and also claim made in the Chamber Summons.

7] It is required to be noted that Respondent No.1/Defendant No.1 has given inspection of one document to the Petitioner/Plaintiff which is claimed to be in possession of Respondent No.1/Defendant No.1.

8] The provisions of Order 11 Rule 12 which deal with discovery and inspection, same empowers a party to a suit to pray for directions to other party to the suit to make discovery on oath of the documents which are or have been in his possession or power. It is also necessary for the Court to satisfy itself that document should be relating to any matter in question in the suit. Proviso to Order 11 Rule 12 contemplates that the Court may or may not order discovery, if it is of the opinion that same are not necessary for disposing of the suit or for saving costs. Power under Order 11 Rule 14 i.e. for production of documents, precedes with the procedure contemplated under Order 11 Rule 12.

9] It is also required to be noted that such documents are not required to be used with ulterior motive for causing roving inquiry. As such, duty is cast upon the Court to satisfy itself whether such documents are relevant for the purpose of disposing the suit and not for fishing out the information. If we consider nature of documents of which discovery is sought, it is noted that communication between Respondent No.1/Defendant No.1 with her son and such other documents, such as Will etc are sought to be discovered under the Chamber Summons.

10] As stated earlier, Respondent No.1/Defendant No.1 has already granted inspection of one of the documents whereas as far as other documents are concerned which are at Serial Nos. 5(b), (d), (h) and (i) are informed to be in possession of her son, who under the Power of Attorney was authorized to act on behalf of Respondent No.1/Defendant No.1 to pay maintenance charges to Defendant No.2, to collect rent accruing from the suit flat and was also authorized to sign the Bank Accounts and Leave and License Agreement.

11] As far as document at 5(h) is concerned, description of the same and explanation given by Respondent No.1/Defendant No.1 has rightly prevailed before the Court below not to exercise powers for granting discovery.

12] In the aforesaid backdrop, contention raised by Mr. Godbole that reasons given by the court below are incorrect in rejecting the Chamber Summons and that being so order impugned is liable to be quashed and set aside, is liable to be rejected.

13] It appears that the Plaintiff is required to establish her case by proving issues which are framed in the suit. For the said purpose, Petitioner/Plaintiff appears to be trying to go into roving inquiry so as to fish out the information which may or may not be relevant for deciding the issue involved in the suit.

14] In the aforesaid backdrop, refusal to exercise the discretion by the Court below while rejecting the Chamber Summons cannot be faulted with. Reliance placed by the learned Counsel for the Petitioner on the judgments in the matters of *NTPC Ltd* and *Bhagwani Devi*

Mohata Hospital cited supra cannot help the Petitioner in the aforesaid backdrop. That being so, no case is made out for interference. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)