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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4573 OF 2021

GERA PROPERTIES PVT. LTD.PETITIONER
(SITAPARI PROPERTIES PVT. LTD.)
THROUGH MR. ROHIT KUMAR GERA

V/s.

KAMAL DEEPAK ALIAS DILIPRESPONDENTS
UBALE AND ORS

Mr. Dormaan J. Dalal for the Petitioner
Mr. Sanjay Kshirsagar i/b Mr. Rahul V. Shinde for respondent nos. 1
to 6

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 25, 2021.

P.C.:

1] This petition is by stranger to Special Civil Suit No. 1504/2018
initiated by respondent nos. 1 to 6 for declaration and injunction.

2] Petitioner moved an application Exhibit 100 under the
provisions of Order 22 Rule 10 of Code of Civil Procedure, 1908
(Hereinafter referred to as 'CPC' for the sake of brevity) which
provides for procedure, in case of assignment before final order in the

suit. Said application came to be allowed vide order dated 05/10/2020 passed by 14th Jt. Civil Judge Senior Division, Pune thereby ordering impleadment of petitioner as defendants.

3] Respondent nos. 1 to 5-original plaintiffs, feeling aggrieved, preferred appeal being Misc. Appeal No. 141/2020 under the provisions of Order 43 Rule 1(r) of CPC which came to be allowed vide order impugned dated 03/02/2021 passed by learned District Judge, Pune thereby setting aside the order passed under Exhibit 100. As such, this petition.

4] The submissions of learned counsel for the petitioner are, the land in question had come to share of one Dilip @ Deepak whose legal heirs are the plaintiffs. Plaintiffs have filed a suit for setting aside sale deeds executed in favour of defendant. Case of petitioner is, part of property in question which is subject matter of the suit was purchased by petitioner from earlier transferees vide registered sale deed dated 25/09/2019 from defendant nos. 7, 8, 9A and 9B.

5] He would further claim that even if the petitioner is party to other suit, being 1848/2019 in the capacity of defendant no. 16, part of suit property in present suit i.e. 1504/2018 is purchased by the petitioner from defendant nos. 7, 8, 9A and 9B. Said property has to be identified by metes and bounds, hence, petitioner, purchaser of part of the suit property is necessary party. According to him, Appellate Court has set aside the order permitting his impleadment only for the reason that the petitioner has purchased suit the property during the registration of the lis-pendens. As such, according to him, matter requires to be sent back to the Appellate Court for reconsideration. So as to substantiate the aforesaid contention, he has placed reliance on the Division Bench Judgment of this Court in the matter of **Prakash Gobindram Ahuja Vs. Ganesh Pandharinath Dhonde [2016 SCC OnLine Bom 8884]** so as to claim that even if lis-pendens is registered, same will not operate as an embargo on the right of the petitioner to purchase the property as same cannot be read as an injunction. As such, according to him, order impugned is not sustainable and is liable to be quashed and set aside with further direction to implead the petitioner-defendant to the suit.

6] While countering the aforesaid submissions, counsel for respondent nos. 1 to 5 i.e. original plaintiffs would urge that property described in the sale deed dated 25/09/2019 is claimed to be appropriately described in a map which is produced at page 34. Description of the same does not match with that of schedule of the property for which the suit claim is brought into action. For the said purpose, he would rely on the map of the property mentioned in the sale deed at page 63. He would further claim that in another suit preferred by cousins of this respondent being Special Civil Suit No. 1848/2019, petitioner is impleaded as defendant no. 16 as the subject matter of the said suit appears to be in relation to the property that is claimed to have been purchased by the petitioner. He would further claim that boundaries of the property if verified with minute details as described in the plaint with that of with the sale deed executed in favour of the petitioner and also the map annexed with such sale deed, it could be inferred with naked eye that property in relation to which the petitioner is claiming right is different than the one which is subject matter of the suit. As such, according to him, petition is liable to be dismissed.

7] With the assistance of respective counsel, I have perused the sale deed produced on record, details of property purchased by the petitioner with its boundaries, map of the property which is part of sale deed. If same is compared with schedule of the property mentioned in the suit i.e. Special Civil Suit No. 1504/2018, it can be noticed that property purchased by petitioner does not appear to be part of the suit claim. Even though disputed by the petitioner, it can be inferred from the documents that property purchased by the petitioner is different than the one which is subject matter of Special Civil Suit No. 1504/2018 as is pointed out from record by respondent-plaintiff.

8] The proposition of law relied on by the petitioner in the matter of **Prakash Gobindram Ahuja** [cited supra] cannot be an issue of dispute, however, it has to be considered that even if the petitioner has purchased the said property during lis-pendens, petitioner is duty bound to establish that he is proper or necessary party to the suit as property purchased by him vide sale deed which is produced

on record is same as that of one about which suit claim is brought into action. Apparently, petitioner has failed to prima facie demonstrate that suit claim pertains to the property which is purchased by the petitioner.

9] Petitioner has failed to establish from the record that interest in the subject matter of the suit has devolved upon him and he need to continue the suit. The original defendants have not abandoned defending the suit.

10] In the aforesaid background, in my opinion, it cannot be inferred that petitioner is a necessary party to the proceedings and that being so, order impugned passed by the learned Appellate Court does not call for any interference. Petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]