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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6944 OF 2019

Shrikant Shriram Narasaria

....Petitioner

V/s.

Sangita Sharma and another

.....Respondents

Ms. Sukeshi Bhandari a/w Mr. Akshay Chaudhari for the Petitioner
Ms. Hemangi D. Pathare for Respondent no. 1
Mr. Santosh Parad i/b Aruna Savla for Respondent no. 2 MCGM

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 17, 2021.

P.C.:

1] Petitioner moved L.C. Suit No. 2451 of 2016 against Respondent no. 2 Municipal Corporation of Greater Mumbai questioning the notice wherein the Petitioner was called upon to remove illegal construction/altercations. Respondent no. 1 who claims to be in litigation with the Petitioner and his family members in a partition suit, has moved an Application i.e. Chamber Summons No. 1457 of 2016 seeking impleadment as Defendant. Said Chamber Summons came to be allowed vide order dated 26/04/2019. As such, this

Petition.

2] I have heard respective counsel for some time.

3] Considering the nature of prayer made in the Plaint, even if the said Suit is decreed or dismissed, same is not going to adversely affect Respondent no. 1 as her claim for title over the Suit property is already subjudiced in different proceedings before the Civil Court.

4] Apart from above, it is required to be noted that unless Respondent no. 1 establishes the right, title and interest to the property in question i.e. Suit property, she cannot be inferred to have any interest in the suit property at this stage of the proceedings. The Court below, in my opinion, has committed an error by relying on the issue of pendency of the proceedings between the Petitioner and Respondent no. 1 on the issue of title/interest in the property for allowing the Application. The Court below ought not to have in the background of pendency of the Suit at the behest of Respondent no.

1, made an observation that Respondent no. 1 has direct and substantial interest in the said property as no such interest till date is established. In the aforesaid background, in my opinion, Court below has committed an error in passing the order impugned dated 26/04/2019.

5] For the aforesaid reasons, order impugned dated 26/04/2019 passed in Chamber Summons No. 1457 of 2016 in L.C. Suit No. 2451 of 2016 pending on the file of City Civil Court at Dindoshi, Borivali Division is hereby quashed and set aside. Said Chamber Summons stands rejected.

6] Petition is allowed in the above terms.

[NITIN W. SAMBRE, J.]