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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5323 OF 2022**

Ashokkumar Laxshmansingh Galundia
and Others

.... Petitioners/
Ori. Defendants

V/s

Shakuntala Wd/o. Ramesh Jamnadas
Thakkar and Others

..... Respondents

Mr. Karl Tamboly a/w Sheetal Shah a/w Dimple Bhatia i/b Mehta and
Girdharlal for the Petitioner.

Mr. Himanshu Kode for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: MAY 02, 2022

P.C.:-

1] S.C. Suit No.455 of 2009 is for injunction based on title in which
Notice of Motion is taken out by the Petitioners, seeking following
reliefs:-

2] Prayer for directions to the Respondents/Plaintiffs to delete
Ustad Building from the Schedule of Property, averments and prayers
of the said Suit and referring dispute to Arbitration, before the Sole

Arbitrator Mr. Shailesh Shah or in the alternative grant stay to the hearing of the suit sine die under Section 10 of the Civil Procedure Code is rejected by the impugned order dated 05/01/2022.

3] Submissions are, arbitration proceedings are based on the four suits which were initiated by the Petitioners on the basis of agreement dated 02/12/1998 and undated conveyance of 2001.

4] As far as aforesaid four suits are concerned, I am informed that those are already referred to arbitration. In the aforesaid backdrop, contentions of Counsel for the Petitioners are, very subject matter of the present suit being S.C. Suit No.455 of 2009 which is for injunction based on title can be decided based on aforesaid arbitration proceedings. It is submitted that on 06/06/2017 with the consent of the Respondents, this Court appointed Mr. Shailesh Shah as an Arbitrator. As such, in case, claim in the aforesaid arbitration proceedings is allowed, same will have direct bearing on the claim in the suit for injunction preferred by the Respondents. It is further claimed that there is likelihood of recording overlapping findings on

the same set of facts and evidence and that being so, either matter has to be dealt with in accordance with prayer clause (a) of the Notice of Motion or in the alternative suit is required to be stayed.

5] While countering the submissions, contentions of Counsel for Respondents/Plaintiffs are issues in arbitration proceedings and the suit for injunction are altogether different. According to him, suit for injunction is based on title whereas in suits initiated by the Petitioners which are referred to arbitration, the issue was as regards specific performance only. I am informed that, Deed of Conveyance dated 1st September, 2008 is also under challenge. It is further brought to my notice that claim in the suit being S.C. Suit No.455 of 2009 is not subject matter of adjudication in the arbitration proceedings or suits initiated by the Petitioners. As such, dismissal is sought.

6] At the outset, it is required to be noted that suit being S.C. Suit No.2902 of 2011 is based on title vested in Respondents/Plaintiffs by virtue of Conveyance dated 01/09/2008. As far as aforesaid conveyance which vests title in Respondents/Plaintiffs, there is no

injunction in operation or any interim arrangement in pending arbitration proceedings against the interest of the Respondents. In this backdrop, claim of the Respondents/Plaintiffs for grant of injunction based on title has to be tried as an independent issue and cannot be said to be under cloud because of the proceedings initiated by the Petitioners and which are pending before the Arbitrator. As claimed by the Petitioners to issue direction to the Respondents to delete a particular part of the suit property cannot be substantiated by any of the legal sources and it is a sweet will of the Respondents/Plaintiffs to continue with the suit claim, particularly when Plaintiffs claim that title stood vested in them. All these reasons weighed before the Court below while passing the order impugned thereby rejecting the Notice of Motion. Even if in the alternative it is prayed that suit of the Respondents be stayed till arbitration proceedings are decided, I hardly see any reason or convincing ground for granting such relief, particularly when very ingredients of Section 10 of the CPC cannot be inferred from the aforesaid submissions. Irrespective of the claim in arbitration proceedings, as long as title continues in favour of the Respondents/Plaintiffs they have every right

to seek injunction which issue can be tried independent of the arbitration proceedings.

7] In that view of the matter, no error could be noticed in the order impugned. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)