

Anand

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

WRIT PETITION 7562 OF 2022

Swati Kaushik Chodhry & anr. .Petitioners

Vs.

Swapnil Ajay Mehta & ors. .Respondents

Mr. S. Purohit a/w Mr. Farhan i/b. Mr. Tejas Shah, Advocate,
for the Petitioner

Mr. P. Ranjan i/b. M/s. Halai & Co., Advocate, for the
Respondent 1

Mr. Rubin Vakil a/w Mr. Manish Doshi, Ms Virti Shah i/b.
M/s. Vimadalal & Co., for the Respondent 5

CORAM : ROHIT B. DEO, J.

DATE : 27.06.2022

P. C.

. The Petitioners claim to have purchased plot 71-A
admeasuring 171 sq. yds. equivalent to 143.54 sq. mts.
situated in Gamdevi Estate and the residential construction
thereon from Respondent 5 herein and his wife vide
Registered Deed dated 23.03.2009.

2. According to the Petitioners, Respondent 1 -
Mr. Swapnil Ajay Mehta instituted Summary Suit No. 2087
of 2013 against Respondents 2 to 5 which is decreed vide

Judgment and Decree dated 12.08.2014. The decree is money decree for recovery of Rs. 83,73,785/- (Rupees Eighty Three Lacs Seventy Three Thousand Seven Hundred Eighty Five Only).

3. The Petitioners aver that Respondents 2 to 5 did not participate in the Summary Suit which came to be decreed ex-parte. Respondent 1 - Decree Holder filed Execution Application 431 of 2015 and sought attachment of the property purchased by the Petitioners, which is described supra. The Petitioners contend in no view of the matter could an order of provisional attachment have been passed in respect of the said property which was purchased by the Petitioners on 23.03.2009 even prior to the accrual of the alleged cause of action, as pleaded in the suit. On such premise, the Petitioners have taken out Chamber Summons 676 of 2016 for raising / removing the provisional attachment.

4. The grievance of the Petitioners is while it is clear on the face of the record that purchase of the property by

the Petitioners is even prior to the accrual of cause of action and it is not even the case of the Decree Holder that the Original Defendants / Judgment Debtors alienated the property fraudulently in order to avoid or defeat the decree which they realized shall be imminent, the learned trial Judge has directed the parties to adduce evidence. The learned counsel for the Petitioners would submit that recording of evidence is absolutely unnecessary in view of the factual matrix, since it is apparent from the rival pleadings that the property is purchased even prior to the accrual of cause of action in the suit.

5. In my considered view, evidence would be necessary for the simple reason that even if the version of the Petitioners is accepted entirely, he will have to prove the basic documents. Be that as it may, no positive observation is necessary. The real grievance appears to be that as an innocent purchaser of the property, who has nothing to do with the subsequent transaction of the vendor, there is an unnecessary cloud on the title of the Petitioners to the subject property since 2016 or there before.

6. The grievance of the Petitioners can be appropriately addressed by making the enquiry/ evidence time bound and in all fairness, even the learned counsel for the Respondent 1 assures that his client shall co-operate in expeditious disposal. The pleadings are complete. Within the next seven days, the Petitioners shall file his Affidavit in lieu of oral examination-in-chief. The advance copy of the Affidavit shall be served on the Decree Holder. The evidence shall be recorded, if necessary on a day to day basis, subject to adjournments being granted for just and sufficient reason. However, the entire evidence be recorded within 30 days from the date of filing of the Affidavit and the order shall be pronounced within seven days from the conclusion of the evidence, after hearing the parties.

7. The Petition is disposed of.

(ROHIT B. DEO, J.)