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

WRIT PETITION NO. 15934 OF 2023

Brijesh Umashankar Bajpai

.. Petitioner

Versus

Rajesh Umashankar Bajpai and Ors.

.. Respondents

-
- Mr. S.P. Srivastava, Advocate for Petitioner.
 - Mr. Janardan Yadav i/by Ms. Yogita Singh, Advocate for Respondent No.1.
 - Mr. Sagar Patil, Advocate for Respondent No.2 – BMC.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 02, 2024.

P.C.:

1. Heard Mr. Srivastava, learned Advocate for Petitioner; Mr. Yadav, learned Advocate for Respondent No.1 and Mr. Patil, learned Advocate for Respondent No.2 – BMC.

2. The present Writ Petition takes exception to the order dated 23.08.2023 passed by the learned City Civil Court at Mumbai, Borivali Division, Dindoshi, Goregaon, Mumbai in Chamber Summons No.484 of 2023 filed by the Petitioner (Original Applicant No.2) in L.C. Suit No.819 of 2023.

3. Briefly stated, the original Suit has been filed by the Respondent No.1 namely Rajesh Umashankar Bajpai in the City Civil Court to challenge the statutory notice issued by the Municipal

Corporation under Section 351 of the Mumbai Municipal Corporation Act (for short “**MMC Act**”). The notice is with respect to unauthorized construction of the suit structure and/or in the suit structure. The nature and cause of action in respect of which the said Suit is filed is not concerned with entitlement of the original Plaintiff i.e. Respondent No.1 before me in the suit structure. The notice has been issued by the Municipal Corporation for unauthorized construction to the Plaintiff for the suit structure which does not necessarily imply that Plaintiff is the owner of the suit structure or entitled to the same as owner.

4. The nature and scope of the Suit is limited. By the Chamber Summons filed by the Petitioner and Respondent No.3 jointly before the learned City Civil Court seeking their impleadment, grounds of title / entitlement and interest in the suit structure are pleaded. This is an ingenious way of attempting to settle the issue of title in a Suit challenging notice under Section 351 of the MMC Act issued by the Corporation to avoid paying Court fees and filing a Suit for declaration. This cannot be permitted by the Court. The impugned order dated 23.08.2023 while dismissing the impleadment Application has given apt and cogent reasons in paragraph Nos.9 to 17 of the said order and I find no reason as to why the said order should be interfered with.

5. It is clear that the Applicants in the Chamber Summons have attempted to plead their right, title and entitlement in respect of the Suit structure which I do not wish to delineate in this order as it is completely irrelevant to the nature of the original Suit and the cause of action in respect of which the said Suit has been filed.

6. Needless to state that this order has not determined any right, title or entitlement in respect of the suit structure either in favour of the original Plaintiff i.e. Respondent No.1 Rajesh Umashankar Bajpai nor the Petitioner i.e. Brijesh Umashanker Bajpai or Awadhesh Umashankar Bajpayee (Respondent No.3) who are before me.

7. With the able assistance of the learned Advocates, I have perused the impugned order dated 23.08.2023.

8. All that the original Suit is concerned that is whether the suit structure has been constructed as per the approved plan and the legality of the said structure / construction and nothing more.

9. In view of the above, the impugned order dated 23.08.2023 is sustained and upheld.

10. However, it is clarified that in the event if the Petitioner i.e. Brijesh Umashanker Bajpai and/or Respondent No.3 i.e. Awadhesh Umashankar Bajpayee desire to file any substantive Suit proceedings

with respect to claiming their share and/or right, title and/or interest to the suit structure in respect of which the impugned notice has been issued by the Corporation and the speaking order has been passed by the Corporation, they shall be at liberty to file such Suit in the Civil Court having Original Civil Jurisdiction in accordance with law and this order shall not preclude them for exercising their substantive right of seeking title/share in the suit structure strictly in accordance with law.

11. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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