

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 55 OF 2015

SHRI GANESH VISHNU NAIQUE
PANVELCAR AND ANR.,

... Petitioners

Versus

SHRI. JOAO D'CRUZ AND 2 ORS.,

... Respondents

Mr. Shivan Desai, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 10th September, 2015

P.C.:

Heard Mr. Desai, the learned counsel for the petitioners.

2. By this petition, the petitioners/original plaintiffs are challenging the judgment and order dated 3/9/2014 passed by the learned District Judge-1, Mapusa in Misc. Civil Appeal no.28/2010. By the impugned judgment, the appeal filed by the petitioners challenging the order dated 16/7/2009, whereby the application for temporary injunction against the defendants no.1 and 2 was rejected, has been confirmed.

3. It appears that during the pendency of the suit, the suit property came to be transferred in favour of defendant no.3. Hence the petitioner filed yet another application at Exhibit D-79 seeking a similar temporary injunction against the defendant no.3 from creating third party interest in the suit property. That application is rejected

by the Trial Court by an order dated 8/9/2014. Incidentally, the petition also challenges the said order.

4. On hearing the learned counsel for the petitioners and on perusal of the record, it appears that the suit is filed in the year 2005. It is undisputed that since inception there is no order of temporary injunction granted or operating in favour of the petitioners. Thus, for a period of more than ten years the petitioners are without any order of temporary injunction. The Courts below have recorded a prima facie finding that the lease in favour of the defendants no.1 and 2 is in the nature of a permanent lease and the petitioners have only a right to receive "Foro" i.e. rent. In so far as the order against the defendants no.1 and 2 is concerned, the learned District Judge has concurred with the same view. In such circumstances and particularly, in view of the fact that the petitioners are without any injunction since 2005, I do not find that any case for interference is made out in exercise of extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. In such circumstances, the writ petition is dismissed. It is needless to mention that the transfer effected during the pendency of the suit shall be subject to lis pendens under Section 52 of the Transfer of Properties Act.

C. V. BHADANG, J.

ap/-