

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 18 OF 2015

1. Savita Satchit Uskaikar,
major, W/o late Sachit Namdev Uskaikar
2. Asha Satchit Uskaikar,
major, d/o Late Satchit Namdev Uskaikar
3. Sunil Satchit Uskaikar
major, s/o late Satchit Namdev Uskaikar
4. Sunit Satchit Uskaikar
major, d/o Late Satchit Uskaikar
all r/o. H. No. 54 (new), 201 (old) Carmibhat,
Merces, P. O. Santa Cruz, Ilhas Goa.
5. Mohan Namdev Uskaikar
major, s/o Late Namdev Uskaikar
6. Sushma Mohan Uskaikar
major, w/o Mohan Namdev Uskaikar
all residents of H. No. 54 (new)
Carmibhat, P. O. Santa Cruz, Tiswadi, Goa.
7. Akshatabai Satchidanand Shirodkar
major, w/o Late Satchidanand Shirodkar
8. Bharat Satchidanand Shirodkar,
major, s/o Late Satchidanand Shirodkar
9. Smt. Rupa Bharat Shirodkar
major, w/o Late Bharat Shirodkar
10. Shri Vishwas Satchidanand Shirodkar

major, S/o Late Satchidanand Shirodkar

11. Smt. Shital Vishwas Shirodkar
major, w/o Vishwas Satchidanand Shirodkar
all residing at Opposite Hotel Ronil
Sautawado, Calangute, Bardez, Goa.
12. Smt. Laxmi Shrikant Naik,
major, w/o Shrikant Narayan Naik
13. Shri Shrikant Narayan Naik,
major, married, Indian National,
Both r/o Near Betki Society,
Batki, Ponda, Goa.
14. Shri Anant Paik Naik,
Major, married, Indian National,
15. Smt. Amita Anant Naik,
major, married,
Both r/o Ajay Residency, Piale Morod,
Caranzalem, Goa. ... Appellants

V e r s u s

1. Mithun Mauli Uskaikar,
major, Indian National,
S/o late Mauli Uskaikar, Resident of
H. No.54, Carmibhat, P.O. Santa Cruz,
Ilhas, Goa. ... Respondent

Shri Ajit R. Kantak, Advocate for the Appellants.

Shri Nilesh. U. S. Shirodkar, Advocate for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 7TH JULY, 2015.

ORDER:

Heard Shri A. R. Kantak, learned counsel for the appellants and Shri Nilesh Shirodkar, learned counsel for the respondent.

2. The respondent has filed a suit for preemption, declaration and other consequential reliefs which is pending before the competent Civil Court at Panaji. The respondent filed an application for temporary injunction restraining the appellants their relatives, agents and/or other persons claiming through them from carrying out any partition in the suit property and restraining them from alienating or transferring the suit property or part of the suit property or creating any third party interest and from effecting any construction in the suit property.

3. The learned Trial Court by the impugned order dated 6/1/2015 has allowed the application, in the following terms (Paragraph 16):

“ In the circumstances, this application is hereby granted. Pending the final disposal of the suit, the defendants, their relatives, agents and/or other persons claiming through the defendants are restrained from carrying out any partition in the suit property in terms of the sale deed dated 27/7/2006 or from alienating or transferring or creating any third party right in the suit property or any part thereof or from carrying on any construction therein.”

4. It is undisputed that the appellant Mohan Uskaikar and 10 others have filed a separate suit being R.C.S. No.14/2013 for partition of the said property.

5. It is submitted on behalf of the appellants that the learned Trial Court could not have restrained the appellants from proceeding with the partition suit and to that extent, the impugned order cannot be sustained.

6. Shri Kantak, the learned counsel for the appellants

submitted that the appellants have no intention of creating any third party interest or effecting any construction in the suit property. However, the appellants cannot be restrained from proceeding with the partition suit.

7. On the contrary, it is submitted by Shri Shirodkar, the learned counsel for the respondent that the appellants nos. 14 and 15 (plaintiff nos. 10 & 11 in R.C.S. No.14/2013) are strangers. It is submitted that the sale deed dated 27/7/2006 shows that a specified share has been transferred which would be apparent from the fact that the boundaries of the suit property have been set out which is not permissible. He also submitted that thus the impugned order which restrains the appellants from carrying out any partition in the suit property in terms of the sale deed dated 27/7/2006 is legal and proper.

8. It is undisputed that the respondents/plaintiffs and the appellants nos. 1 to 13 (original defendants) are co owners of the suit property. The respondent has filed a suit inter alia claiming a right of preemption and for declaration that the sale deed dated 27/7/2006 is null and void. The learned trial Court has found that

sale deed dated 27/7/2006 seeks to transfer specified portion, which was not permissible. Faced with this situation, it is submitted by the learned counsel for the appellants that the suit for partition can proceed without being influenced by the transfer of the specific portion of the property, vide sale deed dated 27/7/2006. It is submitted that although the trial court has only restrained the appellants from carrying out the partition in the suit property in terms of the sale deed dated 27/7/2006, it is tried to be canvassed, on behalf of the respondent that the partition of the suit property itself cannot be proceeded with. It is submitted that both these suits namely, the suit for partition filed by the appellants and the suit filed by the respondent are pending in two different Courts at Panaji. The learned counsel appearing for the respondent is intending to take steps for getting both the suits clubbed together.

9. In that view of the matter and in view of the submission made by the learned counsel appearing for the appellants that the appellants are not intending to create any third party interest or effecting any construction in the suit property, the following order is passed:

ORDER

- i) The impugned order dated 6/1/2015 is partly modified.
- ii) The partition suit can proceed without the court being influenced by the alleged transfer of specified share as per schedule II in the sale deed dated 27/7/2006.
- iii) The appellants shall not create any third party interest in the suit property and shall not effect any alteration/construction therein.
- iv) All other rival contentions of the parties including the claim for preemption and the challenge to the sale deed dated 27/7/2006 by the respondent are expressly kept open.
- v) The Appeal is disposed of in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/-