

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO. 30 OF 2012**

1. Smt. Francisca Ana Do Rosario Marques,
alias Francisca Marques Pereira e Silveira
alias Francisca Marques Pereira,
widow of late Felix Pereira Silveira,
aged about 74 years, widow,
Landlady,

2. Shri. Francisco Xavier Marques
Gregorio Pereira e Silveira,
alias Francisco Pereira e Silveira,
son of late Felix Pereira Silveira,
aged about 40 years, married,
service and his wife,

3. Smt. Ana Souza,
daughter of Dr. Luis Souza,
aged 32 years, married,
all residing at house no.465,
Muddawado, Saligao,
Bardez, Goa

... Appellants

V e r s u s

1. Shri. Joao Paulo Francisco de Souza,
alias John Paul Francis de Souza,

son of Jose Agnelo de Souza, aged 55 years,
service, and his wife,

2. Smt. Judite Albertina Celina de Souza,
alias Judite de Souza, daughter of
late Santana Rodrigues,
aged 48 years,
married, housewife,
both residing at house no.3/147,
Mudda Vaddo, Saligao, Bardez,
North Goa, and presently residing
at 23 Hillsburgh Drive, Brampton,
Ontario, Canada, L6X 4Z5.

3. Smt. Doris D'Souza,
daughter of late Joseph
Alex Fernandes, aged 55 years,
housewife, and her husband,

4. Shri. Anthony D'Souza,
(since deceased through LR's)
 - 4(a) Mrs. Bianca Louzado and her husband
 - 4(b) Mr. Alan Louzado
 - 4(c) Mr. Cornelius D Souza and his wife
 - 4(d) Mrs. Michelle D SouzaAll residing at 303 Premier Emperor,
Off Military Road, Awesome heights,
Marol, Andheri (East),
Mumbai 400 072.

... Respondents

Mr. M. B. D Costa, Senior Advocate with Ms. K. Betquekar,
Advocate for the Appellants.

Mr. A. D. Bhobe, Advocate for the Respondents.

CORAM: N. M. JAMDAR, J.

DATE: 5 MARCH, 2015.

ORAL JUDGMENT:

By this appeal, the appellants challenge the order passed by the learned Civil Judge, Senior Division, Mapusa dated 25 January, 2012, refusing the application for temporary injunction filed by the appellants in this suit. The appellants pray that the respondents be restrained from interfering in any manner with the suit property or entering the suit property and they be restrained from alienating the suit plot and/or creating third party right with respect of the suit plot and/or creating any encumbrance over the suit plot in any manner changing the use for commercial purpose.

2. After arguing the matter for some time, the learned counsel for the parties, on instructions, have agreed to a broad consensus, as regards the interim arrangement, which is indicated in the paragraphs below. It also is fair in the facts and circumstances of the case.

3. The respondents no. 3 and 4 are in possession of the property and therefore, there is no question of restraining them from interfering in any manner in the suit property as that would amount to their eviction from the property pending

the suit. Mr. Da Costa, learned Senior Advocate for the Appellants has also not pressed for this interim prayer.

4. The second prayer is regarding the injunction to restrain the respondents from creating any third party rights or changing the user of the premises to a commercial use.

5. Mr. Da Costa has drawn my attention to the permission granted by the Village Panchayat, Saligao to the respondent no.3. Since respondents no.3 and 4 are in possession of the premises and if they intend to put the property to use, so as to earn revenue, it is not a irreversible situation, even if the Appellants succeed in their suit. The commercial purpose that is intended, is clear from the permission of the Village Panchayat, which permits the respondents 3 and 4 to start a Guest house/Restaurant/Gift items/Accessories shop. Mr. Bhobe, the learned counsel for respondents no.3 and 4, on instructions, states that the premises will be put to this use is indicated in the permission, and allied activities.

6. Mr. Da Costa has also not pressed for the relief to injunct them from using premises for commercial purpose. Mr. Da Costa however, submitted that if the respondents no.3 and 4 are permitted to use the premises as a restaurant it will cause nuisance to the Appellants. Mr. A. D. Bhobe, submitted that the appellants do not stay close to the property and therefore, there is no question of any nuisance to them. In the permission, the Village Panchayat has already put a condition

regarding nuisance, and it is expected that the Village Panchayat would take appropriate steps if there is in fact any nuisance. If the appellants make out a specific case that the restaurant is causing nuisance to them per se, it will always be open to the appellants to make appropriate application to the Court or to the Village Panchayat.

7. Mr. Bhobe submitted that the suit is barred under section of 31 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975. If the respondents no. 3 and 4 make an application to the learned Civil Judge to take up the issue regarding the bar of jurisdiction, first the learned Civil Judge will give priority for consideration of the issue.

8. Mr. Bhobe on instructions, submitted that respondent no.3 and 4 at present do not have any intention of selling or disposing off the property or creating any lease hold rights. This statement is accepted. In case respondents no.3 and 4 intend to take any such action, they will apply to the learned Civil Judge for appropriate orders, which application will be considered on its own merits. However, it is clarified that this condition is without prejudice to the rights and contentions of respondents no.3 and 4.

9. In view of this order, which is arrived at by consensus, it is expected that the appellants will not restrain the respondents no.3 and 4 from carrying out the activities indicated above, pending the suit.

10. It is also clarified that the above mentioned interim arrangement which is been made upon instructions by the learned counsel for the parties, is without prejudice to the rights and contentions of both the parties. It is directed by consent as under:

a) During the pendency of the suit the respondents no.3 and 4 will not be restrained from carrying out the activities of Guest house, house/Restaurant/Gift items/Accessories shop and allied activities, in the suit premises.

b) During the pendency of the suit, the respondents no. 3 and 4 will not sell or dispose of the property nor create leasehold rights, and if they intend to do so, the respondents no.3 and 4 to make an application, as provided for in this order, which will be decided on merits.

11. The appeal is disposed off in above terms. No costs.

N. M. JAMDAR, J.

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