

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 449 OF 2015

CONFRARIA DO FUNDO REUNIDO,
THROUGH ITS PRESIDENT MR.CAETANO
V. D'MELLO.

... Petitioner

Versus

SHRI AMAR T. BORANA, THROUGH HIS
ATTORENY SHRI SURESH A. BORANA.

... Respondent

Mr. Nigel Da Costa Frias, Advocate for the Petitioners.
Mr. M. B. D' Costa, Senior Advocate with Ms. Sonia Chodankar,
Advocate for the Respondent.

Coram:- F. M. REIS, J.

Date:- 7th August, 2015

ORAL ORDER

Heard Mr. Nigel Da Costa Frias, learned Counsel appearing for the Petitioners and Mr. M. B. D. Costa, learned Senior Counsel appearing for the Respondent.

2. The above Writ Petition challenges the Orders passed by the Courts below whereby an application for temporary injunction filed by the Respondents, inter alia, restraining the Petitioners from interfering with the possession of the Respondents in respect of the disputed property came to be granted.

3. Shri Nigel Da Costa Frias, learned Counsel appearing for the Petitioners, has strongly taken exception to the relief granted by the Courts below on the ground that there is no right pleaded nor

established by the Respondents to claim that they are lawfully occupying the disputed premises. Learned Counsel further pointed out that the Respondents had voluntarily surrendered the possession way back in the year 2009 and, as such, from the said date, the Petitioners are in possession of the disputed premises. Learned Counsel has thereafter taken me through the impugned Order and pointed out that both the Courts below have erroneously come to the conclusion that the Respondents are entitled for an injunction though the aspect of possession has not been considered by the Courts below in accordance with law. Learned Counsel further pointed out that there is no finding in the impugned Orders as to who was in possession as on the date of the filing of the suit and, as such, according to him, the impugned Order stands vitiated and this Court can interfere under Article 227 of the Constitution of India. Learned Counsel further pointed out that there are pending applications filed by the Respondents to handover the keys of the disputed premises which are pending decision before the the learned Judge.

4. On the other hand, Shri M. B. D' Costa, learned Senior Counsel appearing for the Respondents, has pointed out that both the Courts below upon appreciating the evidence on record have come to the conclusion that the Respondents are entitled for injunction to restrain the Petitioners from interfering with the possession of the disputed properties. Learned Counsel further pointed out that there is no perversity in the said finding and, as such, the question of interfering

with the impugned Order in exercise of jurisdiction under Article 227 of the Constitution of India is not at all justified. Learned Senior Counsel further pointed out that the whole exercise on the part of the Petitioners is to dispossess the Respondents of the disputed premises and thereby defeat their rights to occupy such premises. Learned Senior Counsel has pointed out that illegally the Petitioners have tried to dispossess the Respondents and, as such, an appropriate application is pending before the learned Judge for consideration.

5. Upon hearing the learned Counsel and on perusal of the record, I find that both the Courts below whilst passing the impugned Orders have concurrently come to the conclusion that the Respondents are entitled for the relief as referred to herein above. These Orders are passed within the discretion of the Courts below in the course of deciding an application for temporary injunction. On perusal of the impugned Orders, I find that there is no error of jurisdiction committed by the Learned Judge whilst passing the impugned Order. The Courts below have considered the well settled principles of law in granting a temporary injunction and, as such, the question of interfering with the impugned Order in exercise of jurisdiction under Article 227 of the Constitution of India is not at all justified. The contention of Mr. Nigel da Costa Frias, learned Counsel appearing for the Petitioners, that the Respondents have voluntarily surrendered the possession of the disputed premises is a matter to be examined by the learned Judge on its own merits during the hearing of the suit. At

this stage, the learned Judge on the basis of prima facie findings granted the relief to the Respondents.

6. At this stage, on the basis of the material relied upon by the Courts below, the question of interfering with such prima facie findings of the Courts below would not at all be justified. Further, it is not disputed that pursuant to an Order passed by the Court, the keys of the disputed premises are with the Nazir of the Court. It is also brought to my notice that an application filed by the Respondent nos. 1 and 2 to handover the keys of the suit premises is pending adjudication before the learned Trial Judge. In such circumstances, the learned Trial Judge shall proceed to examine the application dated 09.05.2014 on its own merits in accordance with law.

7. Shri Nigel Da Costa Frias, learned Counsel appearing for the Petitioners, has also brought to my notice the Judgment of the Apex Court reported in 2012(5) SCC 370 in the case of Maria Margarida Sequeira Fernandes & Ors. vs. Erasmo Jack De Sequeira (D 2 LRs), laying emphasis to Para 97 of the said Judgment. The observations of the Apex Court are on the basis of the facts in the said case and would not be applicable to the facts of the present case whilst disposing of the application for temporary injunction. In the present case, admittedly, there was a document executed between the parties whereby the premises were occupied by the Respondent no. 1 which is not the situation in the facts of the case before the Apex Court. In

any event, the observations therein are at the time of the final disposal of the suit on merits. Consequently, such observations would have to be examined by the learned Trial Judge on the basis of the evidence brought on record. Hence, I find that no case is made out for interference in the impugned Orders whilst disposing of the application for temporary injunction. Needless to say, such findings are only prima facie findings and that the Court will proceed with the suit after hearing the parties in accordance with law without being influenced with the findings in the impugned Orders.

8. The dispute with regard to the keys would be decided by the learned Trial Court whilst disposing of the said application filed by the Respondents. In view of the interim Orders passed in the above proceedings, it is pointed out that the keys are presently in the custody of the Nazir of the Court. The said keys will continue in the possession of the Nazir until the application filed by the Respondent nos. 1 and 2 dated 09.05.2014 is disposed of after hearing the parties in accordance with law as expeditiously as possible.

9. Subject to the above, Petition stands rejected.

F. M. REIS, J.

arp/*