

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 489/2015**

COLETO SIMOES AND ANOTHER PETITIONERS.

V/s.

MRS. LETICIA E. DOS M. SIMOES. RESPONDENT.

Shri D. J. Pangam, Advocate for the petitioners.

Shri J. P. Mulgaonkar, Advocate for the respondent.

CORAM :- F.M. REIS. J.

Date : - 3 JULY 2015.

P.C. :-

Heard Shri D. Pangam, learned Counsel appearing for the petitioners and Shri J.P. Mulgaonkar, learned Counsel appearing for the respondent.

2. The above petition takes exception to the orders passed by the Courts below, whereby an application for temporary injunction filed by the respondent came to be granted.

3. Briefly, the facts of the case are that the respondent filed a suit, *inter alia*, claiming to be the owner in possession in respect of a

property bearing Survey Nos.120/1 and 110/9 situated at Village Nerul, based on a certificate issued by the Comunidade to inter alia establish that the suit property came to be granted in favour of the husband of the respondent. It is further the case of the respondent that there was interference by the petitioners over the suit property and consequently, the respondent was forced to file the suit for permanent injunction, inter alia to restrain the petitioners from plucking the coconut trees, or interfering with the disputed property. The petitioners joined issue on the averments in the plaint by filing the written statement by inter alia contending that a suit was filed by the brother of the respondent, wherein the husband of the respondent was also a party wherein a counter-claim was filed against the other brothers, as well as the petitioners herein, inter alia, on the ground that the petitioners were interfering with the disputed property. It is further the contention of the petitioners that the disputed property was granted to the grand-father of the petitioners who had a similar name as the husband of the respondent. It is further their case that based on the grant in favour of the grandfather, the ancestors of the petitioners were in enjoyment of the property and plucking the coconut trees therein. It is further their case that the Certificate produced by the respondent from the concerned Comunidade is a sham and fabricated document,

as according to them, a Certificate has been produced before the Appellate Court to establish that the Books of the Comunidade in respect of the alleged transactions reflected in the said Certificate are missing. Pending the hearing of the suit, the respondent prayed for a temporary injunction in terms of the reliefs sought in the suit. The learned Trial Judge, upon appreciating the evidence on record, came to the conclusion that the respondent has, prima facie, established her ownership and possession in respect of the disputed property and further found that the certificate issued by the Comunidade corroborates the contention of the respondent that the grant was granted in favour of the husband of the respondent. The learned Judge, after examining the defence of the petitioners has prima facie come to the conclusion that the petitioners have failed to establish their contention that the disputed property was granted in favour of their grandfather and as such, allowed the application for temporary injunction and, consequently, by order dated 30/7/2014 restrained the petitioners from interfering with the disputed property or plucking the coconut trees therein. Being aggrieved by the said order, the petitioners preferred an appeal before the learned District Judge, which came to be dismissed by the impugned Judgment and Order dated 19th June, 2015. Being aggrieved by the orders passed by the Courts below,

the petitioners have preferred the present petition.

4. Shri Pangam, learned Counsel appearing for the petitioners has pointed out that though the husband of the respondent had filed an application for temporary injunction, along with the counter-claim in the earlier suit filed by the brothers of the respondent, no relief on such application was granted though according to him there was a specific averment in the application that the petitioners were plucking the coconut trees from the disputed property. The learned Counsel further points out that the respondent is malafidely taking advantage of the similarity of the name of the grandfather of the petitioners with the name of the husband of the respondent to contend that the disputed property was granted in favour of the husband of the respondent. The learned Counsel further points out that upon the death of the mother in law of the respondent, there are inventory proceedings which are pending wherein the disputed property has been enlisted. The learned Counsel, as such, submits that unless and until the dispute with regard to the property is adjudicated in the inventory proceedings, the question of restraining the petitioners from interfering or plucking of the coconut trees would not arise at all. The learned Counsel further points out that the learned Appellate Court has misread the evidence on

record to come to the conclusion that the disputed property in the present suit is not the subject matter of the earlier suit. The learned Counsel further submits that the learned Lower Appellate Court has arrived at a perverse finding of fact to come to the conclusion that the disputed property was granted in favour of the husband of the respondent herein when, according to him, the material on record shows otherwise. The learned Counsel has, thereafter, taken me through the impugned orders, as well as the documents on record to point out the perversity in the findings of the Court below to hold that prima facie the respondent has established her ownership and possession over the disputed property. The learned Counsel, as such, submits that the impugned orders passed by the Courts below deserve to be quashed and set aside.

5. On the other hand, Shri J.P. Mulgaonkar, learned Counsel appearing for the respondent has supported the impugned orders. The learned Counsel has pointed out that both the Courts below, on appreciation of the material placed on record, have come to the conclusion that the respondent has established prima facie that she is the owner in possession of the disputed property. The learned Counsel has further pointed out that though it is sought to be contended by Shri

Pangam, learned Counsel appearing for the petitioners that the Certificate relied upon by the respondent is a fabricated document, but, however, the authenticity of such a document has not been disputed by the petitioners before the Courts below. The learned Counsel has, thereafter, taken me through the impugned orders to point out that the Lower Appellate Court has rightly noted that the authenticity of the Certificate issued by the Comunidade, as well as the receipts of rent produced on record, have not been disputed by the petitioners. The learned Counsel further points out that the parties in the earlier suit, are not the parties in the present proceedings and that in the inventory proceedings there is a dispute already raised by the respondent objecting the enlistment of the disputed property in such proceedings. The learned Counsel further submits that in the inventory proceedings, upon the death of the father in law of the respondent, the disputed property has not been described which, according to him, itself establishes that the contention of Shri Pangam, learned Counsel appearing for the petitioners that the disputed property was allotted to the grandfather of the petitioners, cannot be accepted. The learned Counsel has, thereafter, taken me through the impugned orders passed by the Courts below to point out that there is no infirmity in the findings of the Courts below and, consequently, no interference is

called for in the impugned orders.

6. I have given my thoughtful consideration to the submissions of the learned Counsel and with their assistance, I have gone through the impugned orders. The learned Lower Appellate Court, while examining the material on record, has prima facie come to the conclusion that the authenticity of the Certificate issued by the Comunidade has not been disputed by the petitioners. Though Shri Pangam, learned Counsel appearing for the petitioners was drawing an inference that the survey numbers are recorded in such Certificate in the year 1967 when the Land Revenue Code was not in force, but, however, on perusal of the said Certificate, it is seen that the records with regard to the survey numbers is in the context of the meeting of the Annual General Body held in the year 1987. On going through the first part of the Certificate, it refers to the grant in the year 1967 in favour of Domingos Cursino Simoes. That such grant was in favour of Domingos Cursino Simoes is clearly reflected therein. Though it is contended by the learned Counsel appearing for the petitioners that the said grantee is the grandfather of the petitioners, but, however, the learned Lower Appellate Court, upon appreciating the evidence on record, has come to the prima facie conclusion that the said person is

the husband of the respondent. These findings have been arrived at based on the death certificate produced on record and other material produced by the respondent.

7. In such circumstance, I find that the findings arrived at by the Courts below are based on documentary evidence which this Court cannot re-appreciate in its writ jurisdiction under Article 226 of the Constitution. It is well settled that merely because this Court, upon re-appreciating the material on record may come to a contrary conclusion, by itself would not justify interference of this Court in a writ petition under Article 226 of the Constitution, unless the findings are patently perverse. Considering the findings arrived at by the Courts below, I find no perversity in such findings, as such findings are arrived at based on the material placed on record.

8. At this stage, Shri Pangam, learned Counsel appearing for the petitioners has pointed out that in case the relief as granted by the Courts below comes in operation, the respondent may alienate the property or put up some construction therein. Mr. Mulgaonkar, learned Counsel appearing for the respondent, upon instructions, states that in case any alienation, or construction activity is intended to be carried

out in the disputed property, such exercise would be undertaken only after seeking the permission of the Trial Court during the pendency of the suit. Accepting the said statement of Shri Mulgaonkar, the apprehension of Shri Pangam, learned Counsel for the petitioners, would not survive.

9. Shri Pangam, learned Counsel appearing for the petitioners, thereafter, also prays for expediting the trial of the suit. In the peculiar facts and circumstances, the learned Judge may try and dispose of the suit as expeditiously as possible.

10. It is well settled that the Courts may grant a temporary injunction subject to terms. Considering the rival contentions, I find it appropriate to direct the respondent to maintain accounts in respect of the plucking of the fruit bearing trees, including the coconut trees and file such accounts in the Trial Court every year.

11. Subject to the above, I find that no case is made out for interference in the impugned orders. The petition stands rejected accepting the said statement of Shri J.P. Mulgaonkar and filing the said accounts as mentioned hereinabove. The learned Trial Judge shall try

and dispose of the suit as expeditiously as possible, without being influenced with prima facie findings in the impugned orders, in accordance with law.

F.M. REIS, J.

ssm.