

IN THE HIGH COURT OF BOMBAY AT GOA.

First Appeal No.19 of 2015

Mr. Carlton Fortes,
Son of Gilbert Fortes
Age 47 years, married
Businessman, Indian National,
Residing at Excel Residency,
Kerant

..Appellant

Versus

1] Shri Devkikrishna Ravalnath Devasthan
Pandavada, Marcel,
Marcel, Pin 403 107.
Ihas, Goa.

2] Shri. Suhas Dattu Anvekar,
s/o Dattu Anvenkar,
major of age, married,
Businessman, Indian National,
And his wife.

3] Mrs. Shruti Suhas Anvekar,
Major of age, married,
Housewife, Indian National,

Both residing at: A-6, 2nd Floor,
Sakhardanande Apts,
Dr. Dada Vaidya Roqe,
Panji – Goa.

Respondents

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Shri J. A. Lobo, Advocate for the appellant.

Shri V. R. Tamba, Advocate for the respondent no.1.

Ms. S.Rodrigues, Advocate for the respondent nos.2
and 3.

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CORAM : F.M. REIS & K.L. WADANE, JJ.

Dated : 01st July, 2015.

ORAL JUDGMENT : (Per F.M. Reis, J)

Heard Shri J.A.Lobo, learned counsel appearing for the appellant, Shri V.R.Tamba, learned counsel appearing for the respondent no.1 and Ms. Rodrigues, learned counsel appearing for the respondent nos. 2 and 3.

2] Admit. Heard forthwith by consent of the learned counsel appearing for the parties. The learned counsel appearing for the respondents, waives service.

3] The notice issued to the respondents also indicated that the appeal may be disposed of finally at the stage of admission itself.

4] The above appeal challenges the order dated 21st of June 2013 passed by the learned Civil Judge, Senior Division, Panaji, in Special Civil Suit No.34/2011/B whereby the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 filed by the respondent no.1 came to be allowed and consequently, the plaint filed by the appellant came to be rejected.

5] The brief facts of the case may be summarized as

follows:-

The suit came to be filed by the appellant for specific performance of an agreement for sale executed between the appellant and the respondent nos. 2 and 3 on 12th of December, 2000. It is the case of the appellant that the original respondent no.2 had entered into an agreement of sale in respect of the subject property way-back in the year 1996 with the respondent no.1 herein. It is further his case that based on the said agreement of sale, the respondent no.2 was entitled to convey or agree to convey the subject property in favour of any other person. Accordingly, the said agreement dated 12.12.2000 came to be executed by the respondent no.2 with the appellant. The appellant has made different averments claiming that he was entitled for the specific performance of the agreement and consequently sought the relief of specific performance of the said agreement for sale.

6] The respondent no.1 on being served with the summons of the said suit filed an application under Order VII Rule 11 of the Code of Civil Procedure, inter alia, contended that there is no privity of contract between the

appellant and the respondent no.1 and further that the agreement executed in the year 1996 allegedly on behalf of the respondent no.1 is null and void as it is in contravention of the provisions of the Devasthan Regulations. It is further the contention of the respondent no.1 that as the document itself was a nullity, in fact, the Mamlatdar, who is the Administrator of the Devalaya had cancelled the said agreement somewhere in the year 1997. It is further the contention of the respondent no.1 that as the agreement based on which the suit has been filed is a void document, the question of filing a suit on such document is barred in terms of the provisions of Order VII Rule 11 of the Code of Civil Procedure. The respondent no.1 further contends that the appellant was very well aware about the cancellation of such agreement by the learned Mamlatdar and has deliberately failed to exercise any of the rights or remedies in connection with the subject agreement. It is further the case of the respondent no.1 that, in the meanwhile, the land itself has been acquired and consequently, the suit itself has become infructuous.

7] The learned Judge, upon hearing the learned

counsel appearing for the parties on the application under Order VII Rule 11 of the Code of Civil Procedure, allowed such application and consequently, rejected the plaint filed by appellant.

8] Being aggrieved by the impugned order, the appellant has preferred the present appeal.

9] Shri Lobo, the learned counsel appearing for the appellant, in support of his submissions has pointed out that the suit is based on the agreement executed in the year 2000 which refers to the original agreement of the year 1996 wherein the respondent no.1 was, in fact, a party thereto. It is further the contention of the appellant that the respondent no.1 desires to non-suit the appellant on the basis of an order passed by the learned Mamlatdar when no notice was issued to the appellant nor to the respondent nos.2 and 3 herein. The learned counsel further points out that there are specific averments in the plaint that such order of the Mamlatdar is not binding on the appellant and further that the respondent no.2 also had power of attorney on behalf of the respondent no.1 herein. The learned

counsel has taken us through the plaint to point out that the finding of the learned Judge that the suit is barred and does not disclose any cause of action is totally erroneous and consequently, the impugned order deserves to be quashed and set aside. Shri Lobo has further pointed out that there was no time limit specified in the agreement for the performance of the contract and consequently, according to him, when the respondents showed their disinclination in performing their part of the contract, the appellant filed a suit for specific performance of agreement. The learned counsel has thereafter taken us through the impugned order to point out that the learned Judge has erroneously exercised the jurisdiction in allowing the application to reject the plaint.

10] Mr. Tamba, the learned counsel appearing for the respondent no.1 has pointed out that the suit itself is an abuse of the process of Court and it is well settled that such frivolous suit have to be nipped in the bud. The learned counsel further points out that in terms of the Devasthan Regulations, the properties of the Devasthan cannot be conveyed or agreed to be sold in terms of such regulations.

The learned counsel further points out that any such agreement in contravention to the provisions of the Devasthan Regulations are a nullity and as such, the learned Judge was justified to come to the conclusion that the agreement cannot be specifically performed. The learned counsel further points out that there is no privity of contract between the appellant and the respondent no.1, as according to him, the respondent no.1 is not a signatory to the agreement of the year 2000. The learned counsel further submits that as the agreement of the year 1996 came to be cancelled by the Mamlatdar such agreement cannot in any way inherit any benefits to the respondent nos. 2 and 3 to execute any documents in favour of the appellant. The learned counsel has thereafter taken us through the impugned order as well as the plaint and the relevant documents produced along with the plaint to point out that there is nothing on record to suggest that the suit filed by the appellant is totally baseless and without any legal foundation. The learned counsel, as such, submits that no interference is called for, in the impugned order.

11] The learned counsel appearing for the respondent

nos. 2 and 3 has pointed out that the respondent nos.2 and 3 were not given any notice of the proceedings before the learned Mamlatdar nor were they put to notice with regard to any order passed by such Mamlatdar.

12] We have thoughtfully considered the submissions of the learned counsel appearing for the parties and with their assistance, we have also gone through the record.

13] The short point for consideration in the present appeal is:

"Whether the learned Judge was justified to reject the plaint in terms of Order VII Rule 11 of the Code of Civil Procedure?"

14] In the present case, the averments in the plaint suggests that the suit is filed for specific performance of an agreement executed in the year 2000. The agreement of the year 2000 also has recitals about the agreement signed between the respondent no.1 and the respondent no.2 way back in the year 1996. Besides the power of attorney in favour of the respondent no.2 is also referred to by the appellant in the plaint. On perusal of the recitals in the

agreement of 1996, it clearly *inter alia* provides that the purchaser therein would also include the administrator, executor and assignee. In such circumstances, the agreement of the year 1996 also contemplates that the purchaser could assign his rights in terms of the agreement in favour of any person. In such circumstances, the contention of Mr. Tamba that privity of contract has not been spelt out, cannot be accepted at this stage. Needless to say that the respondents can always raise such defence in the written statement and the learned Judge would have to examine such aspect, on its own merits, while deciding the suit.

15] The contention of Mr. Tamba, the learned counsel appearing for the respondent no.1 that the agreement itself is barred in terms of the provisions of the Devasthan Regulation and consequently, the suit itself is barred in terms of Order VII Rule 11 of the Code of Civil Procedure, cannot be accepted. On a plain reading of the provision of Order VII Rule 11 (d), what is provided therein, is that the suit has to be barred by any provision of any law. In the present case, whether the disputed agreement is a nullity

and void is a matter which the learned Judge would have to examine on its own merits upon examining the defence of the respondent nos. 1 and 2. Merely because, it is contended by the learned counsel for the respondent no.1 that the agreement is void does not, by itself, entitle such respondents to get the plaint rejected in terms of Order VII Rule 11 of the Code of Civil Procedure.

16] It is well settled that, for the purpose of examining an application under Order VII Rule 11 of the Code of Civil Procedure, the plaint and annexures thereto are to be examined. On perusal of the plaint, we find that the contention of Mr. Tamba that the agreement itself is a nullity cannot be considered unless the respondent no.1 raised such defence in the written statement. In such circumstances, we find that the learned Judge was not justified to pass the impugned order and reject the plaint filed by the appellant. Needless to say that the contention of Mr. Tamba, the learned counsel appearing for the respondent no.1 based on the provisions of the Devasthan Regulation, is a matter which the learned Judge would have to examine on the basis of the defence raised by the respondents in

their written statement. All the contentions, with that regard, are left open. It is clarified that we have examined the plaint and the contentions of the learned counsel for the purpose of considering the application under Order VII Rule 11 of the Code of Civil Procedure. The findings would not bind the Court while deciding the Suit. At this stage, Shri Tamba, the learned counsel appearing for the respondent no.1, has pointed out that they have not filed the written statement. In the facts and circumstances of the case, liberty to the respondents to file their written statements.

17] In view of the above, we pass the following order:-

Order

- (i) The impugned order passed by the Civil Judge, Senior Division, Panaji dated 21st June, 2014 in Special Civil Suit no.34/2011/B is quashed and set aside and said suit is restored to file of the learned Judge.
- (ii) The learned Judge is directed to decide the suit filed by the appellant, on its own merits, after giving an opportunity to the respondents to file their written statements and proceed in accordance with law.

- (iii) All the contentions of the parties, on merits, are kept open.
- (iv) Parties to appear before the learned Civil Judge, Senior Division, Panaji on 31st August, 2015 at 10.00 a.m.
- (v) The learned Judge shall give an opportunity to the respondents to file their written statements.
- (vi) The appeal stands disposed of accordingly with no order as to costs.

K.L.WADANE, J

F.M. REIS, J.

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