

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NOS.774 AND 775 OF 2014

WRIT PETITION NO.774 OF 2014

1. Shri Janardan Rajendra Rivonkar,
s/o Rajendra Rivonkar, major,
married, businessman,
r/o. H.No. 20, Chimbhel,
Tiswadi, Taluka, Ilhas, Goa. .. Petitioner
V/s
1. Mr. Cipriano Santana Goes,
deceased, Through Lrs and
his wife
2. Mrs. Jamcy Goes (Major)
both r/o H.No. Not known,
Chimbhel, Tiswadi Taluka,
Ilhas Goa
- 2(a) Miss Carol Mercy Goes (Major)
age about 19 years
- 2(b) Master Christopher Anthony Goes
age about 12 years,
Through his Natural Guardian R-2
both resident of H.No. Not Known
Chinchwado, Chimbhel, Ilhas Goa .. Respondents

AND
WRIT PETITION NO.775 OF 2014

- Shri. Sitaram Karapurkar,
S/o late Chandrakant Karapurkar,
age 54, married, Businessman,
r/o. H.No. 185(old) 05(new),
Chinchwaddo, Chimbhel,
Tiswadi, Taluka, Ilhas, Goa. .. Petitioner
V/s
1. Mr. Cipriano Santana Goes,
(Deceased)
Major in age, Married, Mechanic,
S/o late Joao Romano Goes
and his wife, Through LR's

2. Mrs. Jamcy Goes, (Major)
Major in age, Married, housewife
both r/o. H.No. Not known,
Chinchwaddo, Chimbhel, Tiswadi Taluka,
Ilhas Goa.

1(a) Miss Carol Mercy Goes (Major)
Age about 19 years

1(b) Master Christopher Anthony Goes
Age about 12 years, Through his
Natural Guardian, R-2
both resident of H.No. Not Known
Chinchwado, Chimbhel,
Ilhas Goa.

..

Respondents

Mr. S. R. Rivankar, Advocate for the petitioner in both the petitions.

Mr. Abhay Nachinolkar, Advocate for the respondents in both the petitions.

Coram:- C. V. BHADANG, J.

Date:- 7th October, 2015

ORAL ORDER :

By these petitions, the petitioners, who are original plaintiffs are challenging the common order dated 15/07/2014 passed in Special Civil Suit Nos.69/2008/B and 74/2008/B.

2. By the impugned order, the applications filed by the respondents/ defendants at Exh. 43 (in Special Civil Suit No.69/2008/B) and at Exh.40 (in Special Civil Suit No.74/2008/B),

seeking leave to transfer or otherwise deal with the suit property except an area of 979 square metres in Survey No.9/2 of village Chimbél as shown in Annexure A to the applications, have been allowed.

3. The brief facts are that the petitioners filed two Special Civil Suits for specific performance of agreement of sale whereby an areas admeasuring 500 square metres and 300 square metres were agreed to be purchased by the petitioners from the respondents. Those suits are pending before the learned Civil Judge, Senior Division at Panaji and are stated to be at the stage of evidence for the respondents/ defendants. It is undisputed that the petitioners had filed separate applications in the suits for temporary injunction restraining the respondents from dealing with the property or from creating third party interest, which were disallowed by the Trial Court. That was challenged by the petitioners in Miscellaneous Civil Appeal No.142/2009 and 151/2009. Both these appeals have been allowed by the learned District Judge, North Goa, Panaji by separate judgments dated 20/08/2010 and the applications for temporary injunctions filed by the petitioners came to be partly allowed and the respondents/ defendants were restrained from selling or alienating to any third party an area of 500 square metres and 300 square metres from

out of the suit property. It is undisputed that the suit property comprises of two survey numbers being Survey No.20/3 and 9/2 of village Chimbel and the total area admeasuring is more than 18000 square metres. It is further undisputed and is in fact a matter of record that neither the agreements of sale nor the complaints in either of the suits, specify any particular portion, which was agreed to be sold by the respondents. It appears that Sub-Division and the sanction of the lay out of the plot was one of the conditions of the agreements of sale. Be that as it may, the respondents filed the applications at Exh.43 and Exh.40 as aforesaid, seeking permission to transfer or otherwise deal with the suit property, except an area of 979 square metres from out of Survey No.9/2 of village Chimbel as set out in Annexure A to the applications. The learned Trial Court, by an order dated 15/07/2014, had allowed the applications. Feeling aggrieved, the petitioners are before this Court.

4. I have heard Shri Rivankar, the learned Counsel for the petitioners and Shri Nachinolkar, the learned Counsel for the respondents.

5. The only contention raised on behalf of the petitioners is that an area of 979 square metres as shown in Annexure A is

abutting some mundkarial area. It is contended that thus, in view of the fact that the mundkarial area, which may be disputed area, if set out, would adversely affect the rights of the petitioners.

6. It is submitted on behalf of the respondents that as against the area of 800 square metres, the respondents have set apart an area of 979 square metres which sufficiently protects the interest of the petitioners.

7. I have considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

8. It is not necessary to go into the merits of the claim for specific performance as it is still pending before the Trial Court. However, prima facie, at this stage, the agreements or the plaints do not set out any specific portion and in the suits, specific performance is only sought in respect of 500 square metres and 300 square metres of the land. A perusal of the judgment passed in Miscellaneous Civil Appeal Nos.142/2009 and 151/2009 would clearly show that even at that stage, the interest of the petitioners was protected only to the extent of restraining the respondents from selling or alienating to any third party an area of 500 square

metres and 300 square metres i.e. without specifying any particular portions. The judgments do not show that on behalf of the petitioners, it was urged that the respondents be restrained from alienating any particular portion. Thus, in my considered view, the petitioners cannot justifiably challenge the impugned order, when it sets apart an area of 979 square metres as against the total area admeasuring 800 square metres, in respect of which the injunction is operating.

9. I have carefully gone through the impugned order and in my considered view, no exception can be taken to the impugned order, on the ground of some apprehension by the petitioners that as the portion shown in Annexure A is abutting some mundkarial area, it may prejudice or affect the rights of the petitioners. In my considered view, the judgment passed in Miscellaneous Civil Appeal nos.142/2009 and 151/2009 and the impugned order dated 15/07/2014 sufficiently take care of the interest of the petitioners, if ultimately the petitioners succeed in the suit. The Writ Petitions are without any merit and are hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA