

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 836 OF 2015

1.Mr. Damodar Shabu Raikar,
Son of Shri Shabu Raikar,
Age 39 years, Indian National,

2. Mrs. Shilpa Damodas Raikar,
Wife of Shri Damdoar Shabu Raikar,
Age 34 years, Indian National.
Both residents of H.No.1093,
St. Cruz, Tisk Ponda Goa.

..... Petitioners/Original
Defendants No. 6 and 7.

V e r s u s

1. Mr. Venkatesh Keshav Prabhu Sawkar,
S/o Keshav Prabhu Sawkar,
Age 79 years, Indian National,
R/o H. No.114, Tishem,
Borim-Goa.

2. Mr. Ratnakar Raghobha Desai alias
Ratnakar Vishnu Prabhudessai,
S/O Raghobha alias Vishnu Prabhudesai,
Aged 67 years, Indian National,
R/O. H. No. 34/C. Raigini, Nageshi,
Bandora, Ponda-Goa.

Respondents/Original
Plaintiffs

3. Shripad Devidas Prabhudesai,
S/o Devidas Hari Prahudesai,
Age 44 years, Indian National,
R/o. H. No.88, Karasange, Borim,
Ponda-Goa.

4. Comunidade of Borim,
Borim – Goa,
Through its attorney,
Mr. Haren Anandrao Sinai Borkar,

S/o Anandrao Sinai Borkar,
Age 38 years, Indian National,
R/o H. No. not known, Paniwada,
Borim – Goa.

5. Administrator of Comunidades,
Central Zone,
Church Square, Panaji – Goa.

6. Mr. Haren Anandrao Sinai Borkar,
Age 38 years, Indian National,
R/O. H. No. not known, Paniwada,
Borim-Goa.

7. Mr. Pandarinath Ramchandra Porobo Desai,
S/o Ramchandra Porobo Desai,
Age 60 years, Indian National.

8. Mrs. Vijaya Pandarinath Prabhu Desai,
S/o Ramchandra Porobo Desai,
Age 60 years, Indian National,
both residents of H. No. 23,
Paniwada Borim-Goa.

..... Respondents/
Original Defendants No.1 to 5.

Mr. S. Usgaonkar with Ms. R. Pereira, Advocates for the Petitioners.

Mr. A. D. Bhobe with Ms. S. Bhobe, Advocates for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 29TH OCTOBER, 2015.

ORAL ORDER:

By this petition, the petitioners who are the original defendant nos.6 and 7 are challenging the order dated 7/8/2015 passed by the learned Civil Judge, Junior Division, Ponda, in Regular Civil Suit No.25/2012/C. By

the impugned order, the application (Exhibit 51) filed by the respondent nos. 1, 2 and 3 under Order 1 Rule 10 (2) of C.P.C has been allowed.

2. The brief facts are that the respondents no.1 to 3 have filed suit against the petitioners and the respondents nos. 4 to 8 for a declaration, mandatory and permanent injunction and other consequential reliefs. The plaintiffs are praying for a declaration that the Deed of Redemption dated 25/2/2011 registered on 14/3/2011 is null and void, being executed by fraud and without any authority and also for the relief of declaration that the subsequent Deed of Sale dated 15/12/2011 is null and void. In the suit a relief to restrain the defendants or anybody on their behalf from carrying out any construction in the suit property or creating third party interest or otherwise interfering with the suit property is also claimed.

3. The respondents no.1 to 3 filed an application (Exhibit 51) in the suit purportedly under Order 1 Rule 10 (2) of C.P.C. It was contended that the petitioners had sold some plots forming part of the suit property prior to the filing of the suit. The sale deeds are dated 14/2/2012, 9/2/2012, 16/1/2012, 2/2/2012, 31/1/2012 and 20/1/2012. The suit came to be filed on 22/2/2012. In short, it was contended that the purchasers under the sale deeds are necessary parties to adjudicate and decide the controversy involved in the suit. In such circumstances, the application was moved to join the defendants

no. 8 to 13, as set out in the application.

4. The petitioners filed a reply which was adopted by defendants no. 1 and 2. It was contended that the proposed parties are not necessary to adjudicate and decide the controversy in the suit.

5. I have heard Mr. Bhobe, the learned counsel for the petitioners. It is submitted that from the plaint allegations and in particular para 39 thereof, it is clear that the plaintiff was aware of the petitioners having entered into agreements with the proposed buyers for sale of the said plots which formed part of the suit property. It is submitted that thus, the respondents no.1 to 3 could have arrayed the prospective buyers at the time of the institution of the suit itself. Even otherwise, it is submitted that the main relief claimed and the issue involved is about the validity of the Redemption Deed and thus the prospective purchasers cannot be said to be necessary parties for deciding the controversy in the suit. He, therefore submitted that the impugned order needs to be set aside.

6. I have considered the submissions and perused the impugned order. The learned Trial Court has found that as the sale deeds are antecedent to the filing of the suit, the provisions of Section 52 of the Transfer of Property Act, 1882 would not apply. It appears that for the same reason the

learned Trial Court has held that the judgments in the case of **Amit Kumar Shaw V/s Farida Khatoon** reported in **(2005) 11 SCC 403**, in the case of **Krishna Kumar Vs. Union of India** reported in **(1990) SC 1782** and in the case of **The Regional Manager and anr. Vs. Pawan Kumar Dubey**, reported in **(1976) 3 SCC 334** would not be applicable. The learned Trial Court has further found that the decision in the suit would affect the interest of the proposed defendants/buyers. In that view of the matter, the application was allowed.

7. At the outset it needs to be mentioned that the plaintiffs being the dominus litus have primarily to decide, as to who are to be the parties to the suit. This would be subject to the powers of the Court under Order 1 Rule 10 (2) of C.P.C. whereunder the Court can strike out or add parties. The finding that the presence of a particular party before the Court is necessary in order to enable the Court to effectively and completely adjudicate all questions involved in the suit, is a *sine qua non* for the exercise of the powers under Order 1 Rule 10 (2) of C.P.C. In the present case, the learned Trial Court has found that as the sale deeds are executed, in the names of the proposed defendants, in respect of plots, forming part of the subject matter of the suit, their rights would be affected. In other words, in view of the fact that the proposed defendants would be claiming a right under the sale deeds executed by the petitioners, the presence of the purchasers under the sale

deeds can be said to be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. That is precisely the import of the reasoning articulated by the learned Trial Court while allowing the application. Unless and until it is found that the discretion or power exercised by the Trial Court suffers from any jurisdictional error, no interference in the extraordinary jurisdiction under Article 227 of the Constitution of India is called for.

8. It is true that in para 39 of the plaint the plaintiffs have pleaded that on 17/2/2012, that is, prior to filing of the suit the plaintiffs had learnt about execution of some agreements/sale deeds by the petitioners in favour of some prospective buyers. Merely because the fact was within the knowledge of the plaintiffs about the execution of some agreements cannot preclude the Court from adding appropriate parties, if their presence is found otherwise necessary as contemplated under Order 1 Rule 10 (2) of C.P.C. That apart, the objection at this stage is coming from some of the defendants who may not be directly affected by the addition of the proposed defendants. In that view of the matter, I do not find that any case for interference is made out. In the result the writ petition is dismissed.

C. V. BHADANG, J.

Ap/-