

**IN THE HIGH COURT OF BOMBAY AT GOA  
APPEAL FROM ORDER NO. 51 of 2014**

- 1 El Shaddai Charitable Trust,  
Socol Vaddo, Shanti Niketan  
School, Assagao, Bardez-Goa,  
represented herein by its  
Constituted Power of Attorney,  
Mr. Godfrey Machado, aged 44  
years, Indian National, resident of  
House No.S-1, Sapana Paradise,  
Merces Vaddy, Tiswadi Goa.
- 2 Mr. Mathew Kurian,  
of major age, Indian National,  
resident of House No.165/3, Bairo  
Alto, Assagao, Bardez Goa. .... Appellants

V/s

- 1 Mr. Santosh Lobo,  
of major age, Indian National.
- 2 Elvira Lobo,  
of major age, Indian National,  
married,  
Both residents of Todankar House,  
Cross Road No.1, Off Gokhale

Road, Opp. Portuguese Church,  
Dadar, Mumbai 400 028.

- 3 Govind Korgaonkar  
(since deceased), through legal  
representatives:-

3(a) Mrs. Kamladai Korgaonkar,  
of major age, Indian National,  
residing near Vrundavan Hospital,  
Caraswado, Mapusa, Bardez, Goa.

- 4 Mr. P.D. Kamat,  
of major age, Indian National,  
having office at Sirsat Building,  
1<sup>st</sup> Floor, Mapusa, Bardez Goa and  
residing near Bank of Baroda,  
Aldona Branch, Aldona, Bardez-  
Goa.

- 5 Mr. Justin Ludger Raul D'Lima  
alias Raul D'Lima,  
of major age, Indian National,  
residing at Parra Tower Co-op.  
Housing Society, 1-Building, flat  
No.201, 2<sup>nd</sup> Floor, Jackni, Parra,  
Bardez-Goa.

6 Mrs. Joana Florinda D'Costa  
D'Lima (since deceased) through  
her legal heirs:

6(a) Mr. Reis D'Lima alias Mr. Reis  
Cristovam Minguel De Lima.

6(b) Mrs. Daisy De Lima E Fernandes  
alias Mrs. Daisy Ann Filomena De  
Lima.

Both of major age, Indian  
Nationals, residents of 1249,  
Maple Ridge Drive, Pickering,  
Ontario Lix 149, Canada.

6(c) Mr. Victor Ramos De Lima alias  
Victor Leopoldo Ramos De Lima

6(d) Mrs. Aloma De Lima E D'Souza  
alias Mrs. Aloma Magdalena De  
Lima.

Both of major age, residents of 22,  
Stanley Terrace, Scaborough,  
Ontario, MIW 2E7, Canada.

6(e) Mrs. Regina Figueiredo De Lima  
alias Mrs. Regina Eliza Evelyn  
Figuereado

6(f) Mr. Roland Figueiredo alias  
Roland Anthony Ficueiredo.

Both of major age, residents of 13,  
Townsend Way, North Wood,  
Middlesex, England.

6(g) Ronald De Lima alias Rainero  
Gasper Ronaldo De Lima,

6(h) Mrs. Ella De Lima E Mendonca  
alias Eleuteria De Lima

Both of major age, residents of 10,  
Tilman Circle, Markham, Ontario,  
L3P 5CA, Canada.

6(i) Mrs. Rosa M.M. D'Souza De Lima  
alias Mrs. Rosa Maria Monica  
D'Souza alias Rosita D'Souza.

6(j) Mr. Ambrose D'Souza alias Mr.  
Ambrose Cajetan D'Souza,

Both of major age, residents of Thane, Mumbai, Respondent Nos. 6(a) to 6(j) represented through their Power of Attorney, Mr. Justin Ludger Raul D'Lima, residing at Parra Tower Cooperative Housing Society, 1 Building, Flat No.201, 2<sup>nd</sup> Floor, Jackni, Parra, Bardez-Goa.

- 7 State of Goa, through the Chief Secretary, having office at Secretariat, Alto Porvorim, Bardez-Goa.
- 8 The Inquiry Officer, City Survey, Government of Goa, having office at Mapusa, Bardez-Goa.
- 9 Mrs. Sylvia Natalia De Lima, wife of Raul De Lime, of major age, residing at Parra Tower Cooperative Housing Society, 1-Building, Flat No.201, 2<sup>nd</sup> Floor, Jackni, Parra, Bardez-Goa.

.... Respondents

Mr. Parag Rao, Advocate for the Appellants.

Mr. Joseph Vaz, Advocate for the Respondents.

**CORAM: N. M. JAMDAR, J.**

**Reserved on : 24 FEBRUARY 2015.**

**Pronounced on : 5 MARCH 2015**

**ORDER:**

By order dated 26 December, 2014, the appeal was directed to be finally disposed of. Accordingly taken up for final disposal by consent. Records and Proceedings were called for.

2. By this appeal, the appellants challenge the order passed by the learned Civil Judge, Senior Division, Mapusa dated 12 December, 2014 allowing the application for temporary injunction filed by the respondent no.1 and 2 in the Civil Suit no.1/2012 filed by them and restraining the appellants from carrying out any further construction in the suit property.

3. The respondent no.1 and 2 on 19 March 1992 filed a Civil Suit no.1/2012 in the Court of Civil Judge, Mapusa. The suit is for permanent injunction to restrain the appellants and other defendants from carrying out any construction in the suit property; for mandatory injunction to remove the construction, to direct the survey authorities to correct the survey records, and for declaration that the order passed by the City Survey Officer dated 31 December 1986 is null and void. The suit is against various defendants, and the present appellants came to

be joined subsequently as defendants no.8 and 9.

4. In the suit, the case of the respondent no.1 and 2, the plaintiffs is as follows:

(a) The plaintiffs are husband and wife. They are owners of a property known as "Aradichem Bata" situated at Gaunsavoddo, Mapusa, Bardez-Goa. The property indicated in the old cadastral survey no.2250 and 2251 is the suit property. The suit property belonged to the Grand father of the plaintiff, Lourence Caetano Lobo and Maria Rocha Lobo, the grandmother of the plaintiff. On their death, the property devolved on their children. Three of them died as bachelors and one in infancy. The brother of plaintiff no.1, by a Deed of Renunciation renounced rights in the suit property, and by Deed of Succession dated 8 April 1991, the plaintiffs became owners of the suit property, which was indicated in the old cadastral as survey no.2250 and 2251.

(b) The defendants no.1 and 2 in the suit entered into a sale deed in respect of survey no. 2252 belonging to erstwhile owner Joao de Rocha, which sale deed was fraudulently executed. The defendant no.1 entered into another agreement with defendant no.2 on 1 January 1990 and sought to construct a house, which construction is coming up in the suit property. The new survey plans which were drawn, wrongly showed the properties of plaintiffs and defendants no.3 and 4, and the alignment was shifted southwards, when in fact it corresponds to survey no.2252.

(c) The plaintiff no.1 is employed at Bombay as an Accounts Officer and taking advantage of his absence, the

defendants, in connivance with the survey authorities in Goa, sought to change the survey plans and shift the property. When the plaintiffs obtained certified copies of the plans they found that several unauthorized changes have been made. The plaintiffs thereafter carried out detailed correspondence with various survey authorities, including the Collector. On 25 May 1989, the husband of defendant no.4 and father of defendant no.3 gave his no objection for correction of survey records. The plaintiff no.1 came to Goa in November 1991 for two days and when he went to the office of the survey department, he noticed that again documents of the plaintiffs were manipulated and the alignment was changed and property was shifted southwards. The plaintiffs came to know that defendants no.3 and 4 have filed a suit against defendants no.1 and 2 in which it was disclosed that defendants were fighting over the suit property over which neither of them had any right. The defendant no.1 in the said suit admitted that the suit property was in possession and ownership of the plaintiffs.

(d) When the plaintiff no.1 came to Goa on 18 May 2012 for house repairs, he found that a foundation stone was put in front of the suit property indicating that it was for a project of the appellants. It is only on 18 May 2012 that the plaintiff came to know about illegal encroachment in the suit property. The plaintiffs gave a notice to the appellants, which was not replied. The plaintiffs filed a complaint to the Mapusa Police Station for trespass and complaint was also made to the Municipal Council and various other authorities. On 30 May 2012, the plaintiffs carried out the survey through Government authorized surveyor. The plaintiff approached the Sub

Registrar and obtained copy of the sale deed between the appellants and defendants no.3, 4 and 7. The appellants were joined in the suit as defendants no.8 & 9. The legal heirs of defendant no.4 are foreign nationals who unauthorizedly executed the sale deed. The property was sold during the pendency of the suit, with full knowledge, and it was purchased by the appellants pending the suit with full knowledge, without seeking leave of the Court. The prayer originally sought against the other defendants was made applicable to the appellants as well.

5. The appellants filed their written statement and contested the suit as follows:

(a) The appellants are a Charitable Trust carrying out social and charitable activities. They have set up a charitable Community centers in different places. The appellants want to have another center at Mapusa. The appellants were introduced to persons who claimed to be owners of chalta nos. 65, 67 and 68 of P.T. Sheet of 133 in Mapusa. An agreement for sale was executed on 7 July 2006 for consideration of Rs.64.00 lakhs. A public notice was issued in the local daily "Navhind Times" and no objections were received in the process of purchase of the property. Thereafter the sale deed was executed on 25 June 2007 and the appellants are in exclusive possession of the property since the year 2007. The foundation stone was laid on 9 December 2011 in presence of the local M.L.A. and many guests. Substantial construction is carried out by the appellants. A community center is to be set up. It would be a shelter in terms of a residential complex

with swimming pool which is also to be offered to general public. The possession of the property is with the appellants since the year 2007. On account of financial constraints, the plans for community center have been altered.

(b) Entries in records have been carried out in the name of the appellants. The conversion sanad was obtained on 26 August, 2011 by payment of necessary fees. Development permission was obtained from North Goa Planning and Development Authority, upon payment of requisite charges. The appellants spent substantial amount for obtaining all requisite permissions and invested sum of Rs.64.00 lakhs and much more.

(c) The plaintiffs, to create confusion, have resorted to rely on old cadastral records, which were not finalized. The plaintiffs have wrongly described their property and there has been no change of any kind in the plans, as alleged. The Deed of Renunciation is not a title document. The correction of survey records is to be dealt by survey department and under the Revenue Code and the grievance of the plaintiffs is to be adjudicated before the Land Revenue Code. The plaintiffs have in fact attempted to change the entry of the appellants and have failed. There is no encroachment on the part of the appellants. The appellants have not encroached or carried out any construction in chalta no.74 of P.T. Sheet 133 and do not intend to carry out such construction. The averments made in the plaint were dealt with parawise and denied.

6. A written statement was filed on behalf of the the survey authorities. It was stated on behalf of them that P.T. Sheet

no.133 of chalta no.68 part corresponds to old cadastral survey no.2250 and 2251 as per the survey record.

7. In the suit the plaintiffs filed an application for temporary injunction . In the application, the plaintiffs sought an injunction against the appellants for restraining them from carrying out further construction. Reply was filed by the appellants contesting the application on various grounds, as indicated in their written statement. In addition, the appellants also contended that no relief should be granted to the plaintiffs on the ground of laches and also that balance of convenience was in favour of the appellants.

8. By an order dated 19 April 2014, the learned Civil Judge granted an ad-interim order of status quo. The appellants thereupon filed Writ Petition no.238 of 2014. In this Writ Petition, the learned Single Judge on 1 October 2014 granted interim stay to the order dated 19 April 2014 and directed the learned Civil Judge to decide the application for temporary injunction. By an order dated 31 October 2014, the learned Civil Judge granted the application for temporary injunction and restrained the appellants from interfering with the suit property and continuing with the construction. Thereafter, the appellants filed Appeal From Order on 7 November 2014. This Appeal From Order was disposed of on the ground that the learned Civil Judge had not given adequate reasons in support of the order and the application was to be decided afresh. It was also directed that any construction to be carried out by the appellants was to be subject to the final outcome. Thereafter,

by the impugned order dated 12 December 2014, the application was granted by the learned Civil Judge and appellants were retrained from carrying out any construction. This order is impugned in the present appeal.

9. I have heard Mr. Parag Rao, the learned Counsel for the appellants and Mr. J. Vaz, the learned Counsel for the respondents. Both the learned Counsel have argued the matter extensively.

10. Mr. Rao, the learned Counsel for the appellants submitted that the entire suit filed by the plaintiffs is based on confusion and the plaintiffs are not sure where their property lies. Mr. Rao submitted that at the most the claim of the plaintiffs can be in respect of chalta no.74 of P.T. Sheet 133. He submitted that the Deeds of Renunciation and Deeds of succession are not document of title and no suit can be based upon the same and if that be so no relief can be granted against the appellants. He submitted that in respect of chalta no.74 of P.T. Sheet no.133, the entire property has been sold and there is no subsisting right left in the plaintiffs. He further submitted that no suit can lie on the basis of the cadastral survey as in terms of Section 107 of the Goa Land Revenue Code, old survey records stand superseded. He submitted that the case of the plaintiffs is based on the premise that cadastral survey no.2250 and 2251 belongs to them, but it is not styled as a suit property. He submitted that name of the appellants appear in the records and a presumption arises in favour of the appellants till it is satisfactorily dislodged. He further

submitted that the suit is barred by limitation, as the sale deed of the appellants is dated 25 July 2007. He further submitted that the pleadings of the plaintiffs would show that there is total uncertainty and vagueness in the pleadings while describing the property. According to Mr. Rao, the plaintiffs attempted to get the survey records corrected and having failed in those proceedings are trying to do the same by a back door method. He submitted that inspite of the fact that the cause of action arose in May 2012, and the appellants impleaded on 17 December 2013, the application for temporary injunction is filed only in April, 2014. Mr. Rao, with reference to the maps on record, tried to demonstrate that the theory of the plaintiffs that their property has shifted with each successive survey number is wholly incorrect and the property has remained consistent. He submitted that the plaintiffs took no objection when defendants no.1 and 2 encroached in the property and have in fact constructed upon the property. He submitted that the maps would show that construction of the appellants is beyond the construction of defendants no.1 and 2 and it will clearly show that the construction of the appellants does not fall in the property claimed by the plaintiffs. He submitted that the surveyor of the plaintiffs has placed a wrong and bogus survey maps on the record. He submitted that survey no.2250 belongs to the Government and it is stated so by the Government which completely destroys the case of the plaintiffs. He submitted that substantial investment has been made by the appellants and construction came up till plinth level and though the appellants had plans of building a complex, but due to

financial constraints, they would be only constructing a building on the plinth already existing. He submitted that in the circumstances, the order of temporary injunction passed against the appellants was incorrect and against the principles for grant of injunction.

11. Mr. Rao relied upon the decisions of the Apex Court in the case of *Radhika Devi V/s. Bajrangi Singh & Ors.* reported in (1996) 7 SCC 486 and on the decisions in the case of *Dalpat Kumar & Anr. V/s. Prahlad Singh & Ors.* reported in (1992) 1 SCC 719, *Bruce V/s. Silva Raj & Ors.* reported in 1987 (Supp) SCC 161 and *Anand Prasad Agarwalla V/s. Tarkeshwar Prasad & Ors.* reported in (2001) 5 SCC 568 in respect of the principles governing grant of injunction. He relied upon the decision of the Apex Court in the case of *Dilboo (Smt.)(dead) by LRs. & Ors. V/s. Dhanraji (Smt.) (Dead) & Ors.* reported in (2000) 7 SCC 702, to contend that suit was not within limitation. He relied on the decisions of this Court in the case of *Shri Damodara Ranum Porobo Loundo V/s. Shri Bhasker R. Jalmi & Ors.* reported in 1990 (2) Goa L.T. 407, *M/s. Deeksha Holiday Ltd. V/s. Smt. Sita Rama Naik Desai & Ors.* reported in 1998 (2) Goa L.T. 443, regarding presumption in the Revenue Records and grant of temporary injunction considering the revenue records. He submitted that the appellants are in possession and therefore no order of recovery of the possession can be granted and he relied upon the decision in the case of *Anathula Sudhakar V/s. P. Buchi Reddy (dead) by LRs.* reported in (2008) 4 SCC 594.

12. Mr. J. Vaz, the learned Counsel for the respondents on the other hand submitted that the appellants had full knowledge of the pending suit and without seeking relief of the Court constructed in the property and must face the consequence of it. He submitted that the plaintiffs stay in Mumbai and plaintiff no.1 is employed and he can come to Goa only for short duration. He submitted that it is the case of the plaintiffs right from the beginning that the survey records in respect of his property, taking advantage of his absence, are being manipulated and the defendants with the help of survey authorities are shifting alignment, encouraging encroachments. He submitted that when the plaintiffs noticed a board of inauguration put up by the appellants, plaintiffs immediately gave notice to the appellants calling upon them to desist from doing such acts. He submitted that there was no reply to the notice and in fact the appellants came to the office of advocate of the plaintiffs to give an offer to purchase the property. He submitted that inspite of this position, the appellants have brazenly carried out the encroachment.

13. Mr. Vaz submitted that various changes in the survey plans from time to time have created a position where there is uncertainty about the boundaries and location and the properties have been clubbed. He submitted that the survey plans were changed without notice to the plaintiffs inspite of the fact that the suit was pending. He further submitted that inspite of the pending suit, name of the appellants was entered into the records without notice to the plaintiffs. He

submitted that the plaintiffs had to run from pillar to post, lodging complaints to all authorities regarding encroachment on their land. He submitted that the plaintiffs engaged services of a retired Government surveyor to prepare a report. In the written statement filed by the Government, Government has acknowledged the report of the surveyor as correct. Mr. Vaz further submitted that the plaintiff no.1 intends to settle in Goa after his retirement and if the construction is allowed to go ahead, it will be impossible for him to rectify the situation and it will directly affect the enjoyment of his property. Mr. Vaz relied upon the decision of the Apex Court in case of ***Rajkumar V/s. Sardari Lal & Ors.*** reported in ***(2004) 2 SCC 601*** as regards the effect of lis pendens. He also relied upon the decision of the Apex Court in the case of ***Sarvinder Singh V/s. Dalip Singh & Ors.*** reported in ***(1996) 5 SCC 539***, to contend that the property could not have been sold without obtaining leave of the Court. He submitted that the learned Judge has therefore rightly exercised the discretion, and sought dismissal of the appeal.

14. Though Mr. Rao has sought to argue the matter in great detail to demonstrate that there is no uncertainty about the location and the alignments and nothing really needs to be resolved at the trial, the parameters of an Appeal From Order must be kept in mind. Firstly, at the stage of grant of injunction, it is not for the Trial Court to hold a mini trial. What the Trial Court basically looks at is a prima facie case, and in whose favour the balance of convenience lies and whether there are special equitable circumstances. The learned

Trial Judge has to primarily decide the equitable position till the suit is decided. If the Court finds that there exists a prima facie case and balance of convenience lies in favour of the plaintiffs, then generally the learned Judge grants an injunction and directs that a particular position is to be maintained till the suit is finally decided.

15. While considering an Appeal From order, the parameters are even more rigorous. An Appeal From Order is an appeal on principle. The Appellate Court considers whether the discretion used by the Trial Judge to grant interim injunction is lawful, and that it is not perverse.

16. The Apex Court in the case of ***Wander Ltd. V/s. Antox India (P) Ltd.*** reported in ***1990 (Supp) SCC 727*** has laid down as under:

*“9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated*

*“...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies.”*

*The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is*

*yet to commence his enterprise, are attracted.*

*\* \* \**

*14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the*

*appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph :*

*“... These principles are well established, but as has been observed by Viscount Simon in Charles Oseinton & Co. v. Jhanaton, .... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.”*

*The appellate judgment does not seem to defer to this principle.”*

This decision is consistently followed.

Therefore, though Mr. Rao has attempted to argue detailed questions of facts and analyzing each and every document, maps and plans, what requires to be seen is whether the conclusion reached by the learned Trial Judge was reasonably possible. It is not for me to take another view merely because had I considered the matter as a Trial Judge, I would reach a different conclusion.

17. No fixed rules or notions are to be held in matter of

injunction. All facts and circumstances of each case have to be considered and the grant of relief is flexible ,albeit with certain parameters. In this context, an important facet of this matter that must be kept in mind is that the suit filed by the plaintiffs alleging manipulation of plans was already pending when the appellants with full knowledge of the suit, decided to deal with the property.

18. The first question that would arise is whether there exists a prima facie case. Though a prima facie case cannot be a fanciful one, prima facie case does not mean that the plaintiffs needs to be conclusively prove that he will succeed in the suit. It will have to be seen as to what is the case of the plaintiffs and whether evidence produced on record shows that there exists a prima facie. The plaintiff's case will have to be considered in totality.

19. The suit is filed in the year 1992. Many defendants are settled abroad, and also the plaintiff is residing in Mumbai. The main grievance of the plaintiffs that there are manipulations in respect of his property in the survey records ,taking advantage of his absence, is a long standing one. The plaintiffs have made several applications to the authorities to get the record corrected. According to the plaintiff the maps are manipulated. The maps have been placed on record. I have gone through the maps. Mr. Rao was at pain to compare each map to show that there is absolutely no deviation and all maps match. Whether all maps match, whether there are deviations, that is something which will

have to be decided in suit. At this prima facie, stage there is an affidavit by the Government which supports the survey undertaken by the plaintiffs. To scrutinize each map and to undertake the exercise to reconcile them would be holding a mini trial at this stage. The survey carried out by the plaintiff's surveyor is accepted in the written statement of the State Government. It lends credence to the case of the plaintiff of his consistent grievance regarding changes in the record. It also gives a prima facie answer to the argument of the appellants that the suit is based only on the cadastral surveys. Once the written statement of the Government acknowledges that the old survey number is the same as the suit property, it has to be taken as a prima facie case in favour of the plaintiffs .

20. Plaintiffs have complained about the manipulations, they have complained about collusion with the authorities, they have complained about the encroachment which are taking place in view of their absence from Goa. This ground is since 1992 and much before the appellants entered on the scene. This is not a case made out only after appellants came in the picture. The entry of the appellants has only compounded the allegations already on record.

21. Though Mr. Rao has tried his level best to convert hearing of this Appeal From Order to hearing of the suit, it is not permissible to do so. The prima facie case in favour of the appellants is rightly been held to be so by the learned Judge by relying on the documentary evidence and the maps. Prima facie case means where there is a serious question to be tried

at the hearing and there is a probability of plaintiffs obtaining relief at the conclusion of trial on the basis of material placed before the Court. Prima facie case is that such a question raised bonafide, which needs investigation and decision on merits. The Court cannot insist upon a full proof case warranting an eventual decree, something which Mr. Rao is calling upon the Court to do. What is to be seen is whether plaintiffs' case is not frivolous or vexatious. Considering the case of the plaintiffs and the documents produced on record, it cannot be said that claim of the plaintiffs is frivolous.

22. The plaintiff stays at Mumbai and is employed there. It is stated that he used to visit Goa whenever he would get time from his employment and during that limited time available to him he was busy pursuing the matters with the authorities regarding changes in the records and maps. The fact that he has made various complaints to various authorities since 1992 has not been denied. Normally, one will not make complaints to various authorities and spend their time in needlessly taking up issues. The documents preceding the Sale Deed of the appellants show that the appellants had full knowledge of the pending suit. It was known that the suit is pending where the predecessors in title were party and the grievance in the suit was regarding shifting of boundaries and manipulations. Any prudent purchaser would then seek a dialogue with the plaintiffs and ascertain what was the exact grievance in the suit before investigating any amount. This was more so when the predecessors in title have settled abroad. The appellants made no such attempts. Knowing fully well the plaintiffs

reside at Mumbai, they gave an advertisement in local newspaper when a notice to the plaintiffs would have sufficed. The plaintiffs gave a legal notice to the appellants which has not been replied. Though the contents of the notice are not pleadings, the notice forms part of record. In the notice it is stated that appellants tried to negotiate with the plaintiffs to purchase the property. The appellants did not even seek leave of the Court, where suit was pending and inform that they are purchasing the property. The appellants purchased the property with full knowledge of the litigation, without ascertaining the true facts from the plaintiffs and after the injunction is granted now seek to contend that the plaintiffs have no prima facie case. The conduct of the appellants is blatant to say the least. It is not unknown in Goa that the properties, whose owners are settled outside, get encroached. In the present case both the plaintiffs and most of the predecessor in title of the appellants, do not stay in Goa. The appellants' inauguration of the construction was also under political patronage. It has been grievance of the plaintiffs that manipulations in respect of his property were done by the defendants and the appellants with the collusion of the government authorities. The learned Trial Judge in this background rightly found that the conduct of the appellants was blameworthy. The Apex Court in the case of **Deoraj V/s. State of Maharashtra & Ors.** reported in **AIR 2004 SC 1975** has observed that while granting interim relief the Court should be satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the

hearing, and at the end the Court would not be able to vindicate the cause of justice. In the facts of the present case this principle is fully applicable.

23. Mr. Rao raised an issue of limitation in filing the suit. He contended that the Sale Deed was of the year 2007 and the challenge now made is barred by limitation. According to him there is also delay and laches in seeking injunction. Sale Deed was executed with full knowledge of the suit. Even the entries made in the record on the basis of the Sale Deed were without notice to the plaintiff, inspite of the fact that suit was pending. Prima facie, therefore, the appellants cannot rely upon the presumption in their favour. Deed was executed without seeking leave of the Court. What is the effect of such Sale Deed will be considered at the time of trial. The defendants cannot simply try to take over the property involved in a suit without taking any precaution or seeking leave and then try to dislodge the case of the plaintiffs on the ground of limitation. Such conduct cannot be pardoned, when equitable reliefs are concerned. As regard delay in applying for injunction, the learned Trial Court has considered that the plaintiffs do not stay in Mumbai and after they came to know about the construction a notice was issued and an amendment was sought for. This finding cannot be said to be an impossible one.

24. The appellants have contended that they are a charitable institution and they want to carry out construction in furtherance of their charity activities. In the written statement

it is contended that the appellants want to set up an state of art Community Center. It would have a swimming pool, sports facility, residential buildings. The appellants have stated that all this is primarily for vocational needs of children. It is also stated that all these facilities will also be offered to general public. It is contended by Mr. Vaz that this construction is nothing but a plush hotel complex. Though in the written statement it is stated that all these facilities are primarily for children, it is also mentioned that it will be open to general public. Considering the fact that tourism is one of the predominant business in the State of Goa, the project *prima facie* does appears more like a commercial hotel complex than a children's center. Mr. Rao submitted that only one building of a community center will be built. The written statement makes a reference to this change of proposal, but only on the ground of lack of finances. Queries were made with Mr. Rao to place on record the revised sanctioned plan, however that was not done. The proposed activity of the appellants, therefore *prima facie*, considering the facts and circumstances, does not appear to be merely a charitable one.

25. On the other hand the plaintiffs are individuals. The plaintiff no.1 is employed and they have stated that they wish to settle in Goa after his retirement. From their case, it appears that plaintiffs are having an uphill battle with the authorities in respect of manipulation in record of rights, for last 20 years. The way the appellants have entered into the litigation, the apprehension that if the construction is allowed, the property will be fully lost from plaintiff's hands, cannot be

termed as unrealistic. Though Mr. Rao has stated that any construction done can be made subject to final outcome of the suit and no equities will be claimed, it will not serve the purpose of the plaintiffs. Even after the proceedings are culminated in plaintiffs' favour, demolition will take years. The earlier orders passed by this Court to this effect were not after considering the matter fully on merits. At present the construction is only at the plinth level. The appellants have with full knowledge taken a calculated risk. Taking advantage of the absence of the plaintiff's and the predecessor in title, construction is sought to be put up. The balance of convenience has correctly been held to be in favour of the plaintiffs.

26. Much has been sought to be made about the construction carried out by defendants no.1 & 2 to which plaintiff is not supposed to have objected. Mr. Vaz submitted that these defendants have settled the matter with the plaintiffs and that plaintiffs have no grievance left with them. Whatever may be the terms of compromise but appellants cannot take advantage of the fact that plaintiffs allowed the construction of defendants no.1 & 2. The argument that construction of the appellants lies beyond the construction of defendants no.1 & 2 will have to be established by leading evidence, would require detailed adjudication on facts.

27. Therefore, taking overall view of the matter, I am of the opinion that the learned Judge has not committed any error in granting injunction. It cannot be said that the plaintiff has no

prima facie case at all. All the arguments raised by Mr. Rao go beyond the need to establish the prima facie case and calls upon the plaintiff to prove his case beyond doubt. This is impermissible.

28. Appeal is devoid of any merits and is accordingly dismissed. No order as to costs. Records and proceedings be sent to the Trial Court forthwith. It is clarified that the observations made are all prima facie. The learned Judge will give priority to the disposal of the suit, which is instituted in the year 1992.

**N.M. JAMDAR, J.**

NH/-

29. Mr. P. Rao states that this Court on 26 December 2014 had granted an order of status quo in terms of order dated 15 November 2014 which permits the appellants to carry on with the construction, which be extended for a period of 6 weeks, as appellants are desirous of challenging the present order.

30. Mr. J. Vaz opposes. He submits that no construction at present is going on, on the site. Considering the facts and circumstances and that I have taken a view that the plaintiff needs to be protected by an order of injunction which is rightly passed by trial Court, request to permit the appellants

now to go ahead with the construction will be contrary to the view I have taken in this order. Furthermore, the order dated 15 November 2014 was till the entire matter was to be heard on merits. Therefore the prayer is refused.

**N.M. JAMDAR, J.**

NH/-