

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 6 OF 2016.

1. Mr. Devidas Damodar Sattarkar,
50 years, son of Mr. Damodar
Sattarkar;
2. Mrs. Devita Devidas Sattarkar,
46 years, wife of Mr. Devidas
Damodar Sattarkar;
3. Mr. Prabhakar Savlo Velkasker,
49 years, son of Savol Velkasker;
4. Mrs. Bharati Prabhakar Velkasker,
39 years, wife of Mr. Prabhakar
Savlo Velkasker;
All majors, married, Indian Nationals,
Agriculturist and residing at House No.
62, Velsao-Murdi, Cansaulim, Goa. ... Appellants.

V e r s u s

1. State of Goa,
Through the Chief Secretary,
Secretariat, Assembly Complex,
Porvorim, Bardez, Goa.
2. The Town and Country Department,
Vasco da Gama, Goa.
3. The Deputy Collector & S.D.O,
Murmugao, Vasco da Gama, Goa.
4. Inspector of Survey and Land Records,
City Survey, Vasco da Gama, Goa.
5. Mrs. Maria Esther Da Costa,
65 years, wife of Mr. Gondicalo
Da Costa and her husband;
6. Mr. Gondicalo da Costa,
82 years, son of late
Mr. Hipolito da Costa,
Both married, Indian Nationals,
And residing at Anchorage House,

Aquem, Alto, Margao, Salcete, Goa.

7. M/s. Team S.A,
A proprietary concern,
Represented by Its proprietor
Mr. Ashley Anthony Joseph
Alias Mr. Anthony Joseph Lewis
O'Brien, son of late Mr. Theo O'Brien,
50 years, Businessman, married,
residing at Villa Sofia, Miration Gardens,
Airport Road, Chicalim, Vasco, Goa. ...Respondents.

Shri A. Monteiro, Advocate for the appellants.

Shri V. Sardessai, Addl. Govt. Advocate for the respondents no.1, 2, 3 and 4.

Shri A. D. Bhobe, Advocate for the respondent no.7.

Coram:- NUTAN D. SARDESSAI,J.

Reserved on:-17th June, 2016.

Pronounced on:-24th June, 2016.

JUDGMENT

Heard learned Counsels appearing for the respective parties.

2. Admit.

3. Shri V. Sardessai, learned Addl. Govt. Advocate waives notice on behalf of the respondents no.1, 2, 3 and 4 and Shri A. D. Bhobe, learned Advocate waives notice on behalf of the respondent

no.7.

4. This is an appeal at the instance of the original plaintiffs assailing the order of the learned District Judge-II South Goa, Margao by which she dismissed their application for temporary injunction in a suit for declaration and permanent injunction.

5. A brief narration of the facts would be essential to appreciate the case seeking the equitable relief of injunction. The appellants as the original plaintiffs claimed that they were the co-owners of the property bearing survey nos.52/1, 52/3, 52/8 and 51/2 pursuant to a Deed of Sale dated 24.3.1998. The first appellant had noticed some interference with the suit property no.52/1 for the first time on 11.3.2014 and learnt on enquiries that the Sale Deed dated 22.8.2013 was entered into by the respondents no.5 and 6 in favour of the respondents no.7 in respect of the property bearing survey no.52/1-A which was a part of the same suit property owned by the appellants. There were acts of interference precipitating the application for temporary injunction and its dismissal giving rise to the present appeal.

6. Shri A. Monteiro, learned Advocate came to be heard on behalf of the appellants who submitted that they had acquired right to the suit property pursuant to the Sale Deed dated 24.3.1998

which was prior in point of time to that of the respondent no.7 and their right was required to be protected by an order of injunction. They would suffer great prejudice and therefore it was a fit case to interfere with the order under challenge and secure them with the appropriate relief.

7. Shri A. D. Bhobe, learned Counsel on behalf of the respondent no.7 submitted that the appellants had failed to show that the jurisdiction exercised by the trial Court was capricious, illegal and arbitrary particularly considering the conduct of the appellants. He then adverted to the Sale Deed pursuant to which the appellants had carved a right to the suit property and how there was suppression of material facts by the appellants and therefore, the appellants were not entitled to any reversal of the order under challenge.

8. The plaintiffs had claimed that they had acquired the right to the suit property bearing survey no.52/1 pursuant to the Deed of Sale dated 24.3.1998 by which an area of 16800 sq. mts was purchased by them as per the survey records. Admittedly this Deed of March, 1998 was registered in the office of Sub-Registrar only on **21.7.1998**. Moreover, on the plaintiffs own showing the property under the Deed known as "Dongorachem Catem" was surveyed under the survey nos. 52/1,52/3, 52/8 and 51/1 for the

total consideration of ₹1,00,000/- (Rupees one lakh only) in 1998. This Sale Deed also made a reference to the Agreement of Sale dated 19.6.1998 which however did not refer to the survey no. 52/1. In other words as already submitted by learned Advocate Shri A. D. Bhobe, the survey no. 52/1 was not agreed to be sold by the Agreement of Sale dated 19.6.1989 and therefore this conduct of the plaintiffs was relevant who had suppressed this material fact from the Court.

9. It is surprising how the property agreed to be sold in 1989 excluding the suit property for the total consideration of ₹1,00,000/- (Rupees one lakh only) was correlated to the Sale Deed of 1998, almost 9 years later for the same consideration which would mean that there was no consideration in respect of the suit plot bearing survey no.52/1. Besides the conduct of the plaintiffs also assumes significance inasmuch as there was a resurvey of the property which was within the knowledge of the plaintiffs in **June,1998** and more particularly at the time of the registration of the Sale Deed in **July,1998**. Hence, the conduct of the plaintiffs to approach the Court for the equitable relief of injunction was fraught with suppression.

10. The defendants had carved a specific plea that the survey no.52/1 was not in existence as it was resurveyed and

ordered to be separated in the year **1995**. They had otherwise raised a counter claim that the Sale Deed was null and void and it was intended to grab their property. The plaintiffs had opposed the counterclaim by their written statement denying the case in defence and pressed for its dismissal. There was no explanation on the Agreement of Sale and the order of resurvey referred to by the defendants which also assumes relevance to consider the conduct of the plaintiffs. The learned District Court-II did make a reference to the order of resurvey conducted by the Director of Survey and Land Records and the preparation of the revised survey plan and it being prior in point of time to the sale in favour of the plaintiffs in 1998.

11. A reference was also made to the fact that the suit property bearing survey no.52/1 was admeasuring 1920 sq. mts as on 22.6.1998 pursuant to the resurvey in 1997 and therefore as rightly contended by learned Advocate Shri Bhobe, it was well within the plaintiffs' knowledge at the time of the execution of the Sale Deed that the property agreed to be sold was admeasuring only 1922 sq. mts and not 16800 sq.mts. The learned District Court-II had taken due note of that aspect that it was within the knowledge of the plaintiff no.1 in particular and therefore there was no basis in their case that they came to know for the first time in the year 2014 that the suit property was partitioned into survey no.

52/1/A. A point was also taken on the side by learned Advocate Shri Bhobe that it was surprising how the plaintiffs could persuade the Court to believe that the property with the distinct survey no.52/1 was agreed to be sold for an amount of ₹1,00,000/- (Rupees one lakh only) in 1989 and the Sale Deed executed pursuant thereto in the year 1998 for the same amount and included a property which did not form a part of the Agreement of Sale. In other words it would mean that the property bearing survey no.52/1 sold without any consideration.

12. Last but not the least, the learned District Court-II had found from the material on record and observed in the impugned judgment that there was no dispute of the fact that the defendants no.7 were carrying on activities in the property surveyed under no. 52/1-A to which the plaintiffs had no right and therefore the plaintiffs had failed to make out a case. The learned District Court-II therefore had rightly concluded that the plaintiffs had failed to make out a case and that the balance of convenience was not in their favour nor would they suffer irreparable injury in case the relief of injunction was refused. The order under challenge does not justify any interference in appeal and therefore I pass the following:-

ORDER

Appeal is dismissed and the order passed by the

learned District Court(II), South Goa, Margao dismissing the injunction application is confirmed.

NUTAN D. SARDESSAI J.

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