

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 59 OF 2016

MR. ANTONIO JOSE BERNADO NUNES AND
2 ORS.,

... Appellants

Versus

MRS. SUCORINA FERNANDES AND 3
ORS.,

... Respondents

Mr. Suraj Rohidas Naik, Advocate for the appellants.

Ms. A. Madkaikar, holding for Mr. Pranay A. Kamat, Advocate for the respondents.

Coram:- C. V. BHADANG, J.

Date:- 24th November, 2016

P.C.

Heard the learned Counsel for the appellants and the learned Counsel for the respondents.

2. The appellants, who are original plaintiffs, are challenging the order dated 11/12/2014, passed by the learned Trial Court, by which the application for the Temporary Injunction for restraining the respondents/ defendants from interfering with the suit property has been dismissed.

3. The brief facts are that the appellants have filed a suit against the respondents for declaration that the sale deed dated 26/03/2013 executed in favour of the respondents by the deceased wife of the

appellant by name Eugina Fernandes, is null and void and other consequential reliefs.

4. The appellants filed an application for Temporary Injunction for restraining the respondents or anybody on their behalf from interfering with the suit property in any manner and/ or selling or disposing of the same and/or creating third party rights and/ or entering in the suit property, pending hearing and final hearing of the suit.

5. The learned Trial Court, by the impugned order dated 11/12/2014, has partly allowed the application, thereby restraining the respondents from selling or creating third party interest in the suit property till the disposal of the suit.

6. It is submitted by the learned Counsel for the appellants that the deceased wife of the appellant no.1 was serving in Kuwait. It is submitted that she was suffering from Cancer and was operated in the year 2007 in Goa. It is submitted that the respondents are coming with a case that they had paid certain amount for incurring the medical expenses for the treatment of the wife of the appellant, which is not at all substantiated. It is submitted that the wife of the appellant no.1 alone could not have executed the sale deed. It is submitted that the appellant no.1 was visiting the suit property till January, 2013 and immediately after coming to know of the alleged

sale deed, the suit was filed on 05/02/2014. It is submitted that in such circumstances, the Trial Court ought to have allowed the application in its entirety.

7. On the contrary, the learned Counsel for the respondents has supported the impugned order. It is submitted that there is registered sale deed in favour of the respondents, the effect of which cannot be brushed aside.

8. I have carefully considered the rival circumstances and the submissions made.

9. Prima facie, at this stage, there is a sale deed in favour of the respondents. The learned Trial Court, after considering this, in para 5 of the impugned order, has come to the conclusion that in the sale deed, the respondents are already shown in possession of the suit property, which consists of the land admeasuring 315 square metres along with house standing thereon. In such circumstances, the learned Trial Court has found that the prayer of the plaintiffs to restrain the respondents/ defendants from interfering with the suit property and house, cannot be granted. In that view of the matter, the learned Trial Court has partly allowed the application, restraining the respondents from selling and/ or creating any third party interest in the suit property, till the disposal of the suit. It can, thus, be seen that to that extent the interest of the appellants are already protected.

Having regard to the fact that at this stage, there is a registered sale deed in favour of the respondents, the validity of which, will have to be gone into at the trial, no case for interference is made out.

10. The appeal is without any merit and is, accordingly, dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA