

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 68 OF 2013.

1. M/s Asiatic Estate Developments
A partnership Firm duly registered
Under the Indian Partnership Act
having its Office at Panjim-Goa,
represented by it's Partner
Eng. Savio A.J. Da Rocha Lobo.
 2. M/s Asiatic Holiday Resorts Pvt.
Ltd., a registered Company duly
registered under the Companies
Act,1956, Through it's Managing
Director, Eng. Savio A. J. da Rocha
Lobo.
 3. Eng. Savio A.J.da Rocha Lobo,
major of age, 7, Sunshine Building,
2nd floor, Rua General B. Guedes
Near Municipal Market,
Panjim, Tiwadi-Goa.
- Appellants.

Versus

1. Miss.Estrella Mariana Robertina
(Deceased) Martha Assumpcao
D'Costa,major of age, Resident of
H. No.1293, Auchit wado
Tivim, Bardez,Goa.
2. Mr. Anthonio Clara D'Costa,
major of age, C/o Miss. Estrella
Mariana Robertina Martha
Assumpcao D'Costa, Resident
of H.No.1293,Auchit wado
Tivim, Bardez,Goa.
3. Mrs. Lucy D'Costas e Souza
major of age,C/o Miss. Estrella
Mariana Robertina Martha
Assumpcao D'Costa, Resident
of H.No.1293,Auchit wado
Tivim, Bardez,Goa.
Presently residing at
7312, 11th Avenue, Burnaby
B. C. Vancouver, Canada.
4. Mr. Ligorio De Souza
major of age, husband

of Lucy D'Costa, Resident
of H.No.1293,Auchit wado
Tivim, Bardez,Goa.
Presently residing at 7312,
11th Avenue, Burnaby B. C.
Vancouver, Canada.

5. Mrs. Maria Rosita Souzana
D'Costa, major of age, widow
of late John Gregory D'Costa,
c/o Miss. Estrella M. R. M. A.
D'Costa, Resident of H.No.
1293,Auchit wado, Tivim,
Bardez,Goa.
Presently residing at 41
Kathelen Avenue, Wembley,
Middlesex, U.K.
6. Mr.Peter D'Costa,
major of age, son of late
John Gregory D'Costa,
c/o Miss. Estrella M. R. M. A.
D'Costa, Resident of H.No.
1293,Auchit wado
Tivim, Bardez,Goa.
Presently residing at 41,
Kathelen Avenue, Wembley,
Middlesex, U.K.
7. Mr. Paul D'Costa,
major of age, son of late
John Gregory D'Costa,
c/o Miss. Estrella M. R. M. A.
D'Costa, Resident of H.No.
1293,Auchit wado, Tivim,
Bardez,Goa.
Presently residing at 41,
Kathelen Avenue,Wembley,
Middlesex, U.K.
8. Mr. Adrian D'Costa,
major of age, son of late
John Gregory D'Costa,
c/o Miss. Estrella M. R. M.
A. D'Costa, Resident of H.No.
1293,Auchit wado, Tivim,
Bardez,Goa.
Presently residing at 41,
Kathelen Avenue, Wembley,

9 Middlesex, U.K.
Mr. Roland D'Costa,
major of age, son of late John
Gregory D'Costa, c/o Miss.
Estrella M. R. M. A. D'Costa,
Resident of H.No.1293,
Auchit wado, Tivim,
Bardez,Goa.
Presently residing at 41,
Kathelen Avenue, Wembley,
Middlesex, U.KRespondents.

Ms. Susan Linhares, Advocate for the appellants.
None present for the respondents.

Coram:- K. L. WADANE,J.
Reserved on: 14th January, 2016.
Pronounced on:21st January, 2016.

ORDER

The appellants have preferred this appeal against the order dated 4.6.2013 passed by the Civil Judge, Senior Division, Panaji whereby an application for temporary injunction under Order 39 Rule 1 of C.P.C. filed by the plaintiffs/appellants herein has been rejected. Hence, the present appeal.

2. Parties shall hereinafter be referred to as per their original status.

3. The brief facts of the case may be stated as follows:-

The plots nos. 1 to 5 under Matriz Nos.442, 451 and 453 situated at Caranzalem, Ihas Goa is the subject matter of the

suit and hereinafter referred to as "the suit properties". One Ms. Agnes D'costa executed an agreement for sale dated 14.2.1989 in favour of appellants/ plaintiff nos.1 and 3 in respect of suit plot nos. 1, 2, 3 and 4.

4. On 26.02.1989, again Ms. Agnes D'Costa executed another agreement for sale with the plaintiff no.1. The plaintiff nos.1 and 2 are sister concerns, doing the business of estate development and construction. The above two agreements were executed with the intention of developing the suit properties by constructing multi-storeyed buildings and for its sale to third parties and/or its prospective buyers. Pursuant to the above said two agreements, the plaintiff no. 3 was given possession of the suit premises. The plaintiffs obtained approvals of building plan so also the plaintiffs obtained conversion sanad on 19.09.1997 for the suit plot no.2. The approval of the North Goa Planning and Development Authority was also obtained.

5. One Mr. Minguel Almeida claiming to be a tenant of the suit properties obstructed the plaintiffs, from entering and developing the suit properties. Therefore on

15.12.1989, Ms. Agnes D'Costa and the plaintiff no.3 constrained to file Regular Civil Suit no.244/89/C before the Court of the Civil Judge, Junior Division at Panaji which is pending.

6. Mr. Minguel Almeida filed an application under Section 7 of the Agricultural Tenancy Act bearing no.TNC/4/1997 before the Court of the Mamlatdar of Tiswadi at Panaji, claiming to be tenant of the suit property no.5. On 06.03.2000, the defendant no.1 issued letter to the plaintiff no.3 informing that he had ample powers to deal with encroachers on the suit property.

7. It is the case of the defendant nos.1 and 2 that these defendants and other co-owners of the suit properties did not at all enter into an agreement with the plaintiff no. 2. That the agreement dated 14.2.1989 was executed by Ms. Agnes D'Costa in favour of the plaintiff no.1 and the plaintiff no. 3 signed the said agreement as partner of plaintiff no. 1. The plaintiff no. 2 was never a party to the said agreement dated 14.2.1989.

8. After hearing both sides, the learned Trial Court

has rejected the application for temporary injunction holding that the suit of the plaintiffs, itself is not within the limitation.

9. I have heard the arguments of Ms. S. Linhares, learned Counsel appearing for the appellants. Though respondents/defendants are served with the notice, remained absent.

10. During the course of arguments, Ms. Linhares, learned Counsel has argued that the above mentioned two agreements for sale are still in existence and therefore, the defendants are not entitled to obstruct these suit properties in any way. She further argued that the possession of the suit properties were already handed over the the plaintiff no. 3 in pursuance of the above two agreements for sale. It is further argued that now the plaintiffs/appellants are in actual possession of the suit property and due to the public notice issued by the defendants, the reputation of the plaintiffs came into danger which is very harmful to the business of the plaintiffs. Some of the defendants are claiming to be owners of the suit properties and one Mr. Minguel Almeida

is claiming to be tenant over the suit properties. Issue of the notice and denial of the right of the plaintiffs gives cause of action to file the suit against the defendants.

11. I have gone through the reasons recorded by the learned trial Court, in which it is observed that the reliefs claimed by the plaintiffs are time barred and because of this, grant of the principal relief namely that the agreements dated 14.02.1989 and 26.2.1989 are null and void, has lapsed since more than three years have elapsed and consequently, the consequential reliefs are also time barred. To my mind, the learned trial Court has without framing preliminary issue as to the maintainability of the suit on account of limitation, has decided it while considering the application for temporary injunction. If at all the suit of the plaintiffs was/is time barred, then it is for the parties to assert and on the basis of which it was for the trial Court to frame preliminary issue regarding limitation. The first relief claimed by the plaintiffs is that of declaration that the agreements dated 14.2.1989 and 26.2.1989 and 1.6.2005 as also power of attorney executed by the defendants in favour of the plaintiff no. 3 with respect to the suit properties are valid and subsisting and

consequently the purported termination of the said agreement and revocation of power of attorney are illegal and bad in law. From the first relief, it appears that the plaintiffs have claimed that the aforesaid agreements are valid and subsisting. Considering the reliefs claimed by the plaintiffs, it appears that they have made prima facie case and balance of convenience in their favour.

12. In such circumstances, interim relief claimed by the plaintiffs ought to have been granted. However, the learned trial Court has rejected it on the ground that the main relief as well as ancillary reliefs claimed/put forward are time barred, which is incorrect. Hence, appeal is allowed. The impugned order dated 4.6.2013 is set aside. Application for temporary injunction accordingly stands granted.

13. Appeal stands disposed of accordingly.

K. L. WADANE, J.

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