

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 756 OF 2016

Ruturaj Rajendra Kundaikar,
Alias Ruturaj Rajendra Naik Kundaikar,
Aged 29 years, unmarried,
S/o. Rajendra Naik Kundaikar,
r/o. H.No.127, Boca de Vaca,
Dr. Dada Vaidya Road,
Panaji-Goa.

.... Petitioner

V/s

1. Hanumant Bajantry,
S/o. Babu Bajantry,
Aged 41 years, married,
Service and his wife,
2. Shevanta Hanumant Bajantry,
Aged 30, housewife,
Both residents of H.No.449,
Ganemorod, Xeldem,
Quepem, Goa.

.... Respondents

Shri Raunaq Rao, Advocate for the Petitioner.

Shri S.S. Kakodkar, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 30th SEPTEMBER, 2016

ORAL JUDGMENT:

Rule made returnable forthwith. The learned counsel for the respondents waives service. Heard finally by consent

of the parties.

2. The petitioners are challenging the judgment and order dated 11/4/2016 passed by the learned District Judge at Margao in Misc. Civil Appeal No.71/2015, by which, while setting aside the order of the learned trial Court, has granted injunction in favour of the respondents restraining the petitioners or anybody on their behalf from alienating plot no.D-20 of the property surveyed under survey no.10/1 or from trespassing, encroaching or interfering therewith in any manner. The learned trial Court by order dated 27/8/2015 had dismissed the application for temporary injunction.

3. The brief facts are that the respondents filed Regular Civil Suit No.88/2013/A which is pending before the learned Civil Judge Senior Division at Quepem for a declaration that the Deed of Sale dated 3/2/2012 executed by the respondents in favour of the petitioners, is null and void and for consequent cancellation of the same and for permanent injunction. The case made out in the plaint is that the petitioner had failed to pay the consideration of the sale

effected by the respondent in favour of the petitioners vide sale deed dated 3/2/2012 for Rs.2,92,000/-. It is contended that the actual consideration agreed was Rs.12,60,000/-. It is also contended that the sale is bad for want of previous sanction of the Collector as per Notification dated 21/8/1978.

4. The learned trial Court found that the respondent had not established the three requirements of having prima facie case, balance of convenience and irreparable loss in their favour. The trial Court found that there is a registered sale deed in favour of the petitioners and the question about the sale deed being executed under coercion, will have to be considered on merits after evidence is led in the suit.

5. The learned District Judge relied upon Notification dated 21/8/1978. The learned District Judge has noticed certificate dated 7/6/2014 issued by the Tahsidlar, Hukeri Taluk, Belgaum District, which showed that the respondent no.1 (plaintiff no.1) belongs to Scheduled Caste (Korava), which is recognized as Scheduled Caste/Scheduled Tribe in the State of Goa. In that view of the matter the appeal has

been allowed granting temporary injunction.

6. I have heard the learned counsel for the petitioners and the learned counsel for the respondent. With the assistance of the learned counsel for the parties, I have perused the order passed by the learned trial Court and the judgment of the learned District Judge.

7. On behalf of the petitioner, reliance is placed on a circular dated 6/3/2014 issued by the Department of Revenue, Government of Goa in which Notification dated 21/8/1978 has been clarified. It is submitted that the requirement of obtaining of prior sanction from the Collector in respect of the lands belonging to Scheduled Caste/Scheduled Tribes, does not apply to any private land either owned or held by a person belonging to Scheduled castes/Scheduled tribes. It is submitted that the said requirement applies only where the Government land is held by any such person belonging to reserved category on occupants rights. It is submitted that the in the present case admittedly the land sold by the respondent is a private land

and, as such, Notification dated 21/8/1978 would not apply. The learned counsel submits that there is a presumption which attaches to the registered document and once the petitioners are shown to be the owners on the basis of a registered sale deed, the petitioners could not have been enjoined. It is submitted that there is no finding recorded by the appellate Court that the respondents are in possession of the suit property and in that view of the matter an injunction restraining the petitioner from encroaching or interfering in the suit property, could not have been granted.

8. The learned counsel for the respondent in all fairness does not dispute that in view of the circular dated 6/3/2014, Notification dated 21/8/1978 would not apply in this case. He only submits that the respondents are required to be given a fair opportunity to establish that the consideration agreed was Rs.12,60,000/- which was not paid. It is submitted that in the event the petitioners alienate or create third party interest in the property it would prejudice the rights of the respondent. The learned counsel in all fairness had restricted his prayer for grant of a limited relief restraining the

petitioners from creating third party interest in the suit property.

9. I have carefully considered the submissions made. A perusal of the judgment of the learned District Judge would show that the District Judge has relied upon the Notification dated 21/8/1978 which would not apply in view of the subsequent circular dated 6/3/2014. Prima facie at this stage, the petitioners are having a registered sale deed in their favour which is executed on 3/2/2012. The suit is filed only on 14/12/2013. The delay in not filing the suit is tried to be explained, away which would be a matter which can be gone at the trial. In my considered view, having regard to the fact that the Notification dated 21/8/1978 would not apply in this case and having regard to the fact that the petitioner is having a registered sale deed in his favour, the impugned order cannot be sustained. In so far as the apprehension on behalf of the respondent that the petitioner shall create third party rights in the suit property is concerned, it is evident that any such transfer would be subject to section 52 of the Transfer of Property Act.

10. At this stage the learned counsel for the respondent prays that the suit be expedited. It is submitted that the suit is ripe for hearing. The learned counsel for the petitioners submits that appropriate orders be passed.

11. In that view of the matter, the following order is passed:

Order:

- (i) The petition is allowed. The impugned judgment and order is hereby set aside restoring the order passed by the learned trial Court.
- (ii) The trial Court shall decide the suit as expeditiously as possible and preferably within a period of one year from the receipt of this order. Parties to co operate for early disposal of the suit.
- (iii) Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/