

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 169 OF 2015

IN

FIRST APPEAL NO. 79 OF 2015

RAJASHRI @ RAJANI AND 4 ORS.,

... Applicants

Versus

MARIA ELSA DE NORONHA WOLFANGO DA
SILVA (SINCE DECEASED) THROUGH HER
LEGAL HEIRS.,

... Respondent

Shri S.D. Lotlikar, Senior Advocate with Shri J.J. Mulgaonkar,
Advocate for the Applicants.
Shri A.F. Diniz and Shri R. Menezes, Advocates for the
Respondents.

Coram:- C. V. BHADANG, J.

Date:- 18th June, 2016

P.C.:

Heard the learned Senior Counsel for the applicants and the
learned Counsel appearing for the respondents.

2. By the impugned judgment and decree the suit filed by the
applicants was dismissed whilst the counter claim filed by the
respondents was decreed, where under the applicants are directed to
put the respondents in possession of the suit property, free from all
encumbrances. The impugned decree further directs the applicants to
pay the respondents mesne profits at the rate of Rs.60,000/- (Rupees
sixty thousand only) per month w.e.f. 19/09/1993 till the date of
handing over of possession.

3. The First Appeal is already admitted. The appellants state that as on today the amount of mesne profits works out to Rs.1,65,00,000/- (Rupees one crore sixty five lakhs only). Considering that this is a First Appeal in which the findings of fact are open, I find that the part of impugned decree directing delivery of possession, can be stayed subject to appropriate conditions. In such circumstances, the following order is passed:

O R D E R

(i) The application is allowed.

(ii) The impugned judgment and decree to the extent of delivery of possession is hereby stayed subject to the condition of the applicants depositing 50% of the arrears of the mesne profits before this Court within a period of eight weeks from today.

(iii) The applicants shall furnish security to the satisfaction of the Executing Court for the remaining 50% of the arrears of the mesne profits within a period of eight weeks from today.

(iv) The applicants shall continue to deposit Rs.30,000/- per month, towards 50% of the mesne profits granted, before the Executing Court, on or before 10th of each calendar month.

(v) On deposit of the amount, the same shall be invested with any Nationalised Bank initially for a period of one year, which shall be renewed thereafter, on year to year basis.

(vi) The application is disposed off in the aforesaid terms.

C. V. BHADANG, J.

NH