

IN THE HIGH COURT OF BOMBAY AT GOA.**APPEAL FROM ORDER NO.49 OF 2015.**

Shri. Cajetan S. Cordeiro,
Major of age, businessman,
Indian National, r/o
H.No. C-7, La Marina II,
Next to Stella Marie Chapel,
Miramar, Panaji, Goa.

.....Appellant.

V e r s u s

1. Shri. Zaro Anita Delgado Fernandes,
2. Smt. Maria De Lourdes
Nunes Costa Delgado
Both major of age, Portuguese
Nationals, residents of Quinta
Nova Lote 8, 6200 Covilha,
Portugal, represented herein by
their duly constituted Attorney,
Mr. Naumann Braganca,
Resident of Gaunsawaddo,
Mapusa, Bardez, Goa.
3. Raj Savio Dias
Major of age, Indian National,
Resident of Zink Inc, 409,
King St. W. Toronto ON M4P
1X9 with local address at
Ramakant Apartments,
St. Inez, Panaji, Goa.
4. Adelia Dos Remedios Furtado
E Pinto alias Maria Adelia Aurea
Dos Remedios Furtado E Pinto,
Major of age, Indian National,
Residing near Post Office,
Calangute, Bardez, Goa.
5. Maria Zita De Jesus Pinto,
Major of age, Indian National,
Residing near Post Office,
Calangute, Bardez, Goa.
6. Ceaser Augusto Agnelo

Dos Remedios Pinto,
Major of age, married,
Indian National,
Residing at West Germany.

7. Barbara Titze E. Pinto,
Major, married, wife of
Defendant no.6 above named,
German National,
Resident of West Germany.
8. Maria Angelica Georgina
Dos Remedios Pinto,
Major, married, Indian National,
Resident of Soccoro,
Bardez, Goa.
9. Timotio Alexio Fernandes,
Major, married, husband of
Defendant no.8 above named,
Indian National,
Resident of Soccoro,
Bardez, Goa.
10. Maria Zoraida Fani
Dos Remedios Pinto,
Major, married, Indian National,
Resident of Calangute,
Bardez, Goa.
11. Jose Jamie Filinto,
Major, married,
Husband of defendant no.10
above named, Indian National,
Resident of Calangute,
Bardez, Goa.
12. Maria Do Ceu Ninette
Dos Remedios Pinto E Proenca,
Major, married,
Indian National,
Resident of Calangute,
Bardez, Goa.
13. Fernando Proenca,
Major, married,
husband of defendant no.12

above named, Indian National,
Resident of Calangute,
Bardez, Goa.

14. Maria Amalia Filomena
Dos Remedios Pinto,
Major, married,
British Subject of
Goan Origin, resident of
spain.
15. David Sutcliffe
alias David Gordon Sutcliffe,
Major, married,
husband of defendant no.14
above named, British Subject,
Resident of Spain.
16. Francisco Luis
Gelasio Dos Remedios Pinto,
Major, married,
Indian National,
Resident of Calangute,
Bardez, Goa.
17. Annete Braganza E Pinto,
Major of age, married,
wife of defendant no.16
above named, Resident of
Calangute, Bardez, Goa.
18. Alexio Alen Eupemano
Dos Remedios Pinto,
Major of age, married,
Indian National,
Resident of Calangute,
Bardez, Goa and also acting
As Power of Attorney holder of
Defendants No.4 to 17
and 19 to 23.
19. Edwiges Carol
Antoniette Sa Pinto,
Major of age, married,
Wife of defendant no.18
above named, Indian National,
Resident of Calangute,

Bardez, Goa.

20. Luis Joao Ivo Dos Remedios Pinto,
Major of age, married,
Indian National,
Resident of Calangute,
Bardez, Goa.
21. Maria Acelia Helena Vas Fernandes E Pinto,
Major, married,
wife of defendant no.20
above named, Indian National,
Resident of Calangute,
Bardez, Goa.
22. Maria Muriel Saozinha Dos Remedios Pinto,
Major, married,
Indian National,
Resident St. Inez,
Panaji, Goa.
23. Jose Agnelo De Sa,
Major, married,
Husband of Defendant no.22
Above named, Indian National,
Resident of St. Inez,
Panaji, Goa.
24. M/s Jai Bhuvan Builders Private Limited, a private limited Company incorporated and registered under the Companies Act, 1956, having Office at 304, Amogh Building, Murari Ghag Marg, New Prabhadevi Road, Bombay 400025.
25. Mr. Peter Vaz,
Major of age, son of late Diogo Vaz, married, businessman, Indian National, Resident of Bungalow 4, Models Meridien,

Marine Road, Caranzalem,
Ilhas, Goa.

26. Mrs. Natalie Vaz,
Major of age, married,
wife of Defendant no.25
above named, Indian National,
Resident of Bungalow 4,
Models Meridien,
Marine Road, Caranzalem,
Ilhas, Goa.

..... Respondents.

Shri J. E. Coelho Pereira, Senior Advocate with Shri S. Karpe,
Advocate, Advocate for the appellants.

Shri S. S. Kantak, Senior Advocate with Shri V. Kamat and Shri A.
Kamat, Advocates for the respondents.

Coram :- NUTAN D. SARDESSAI, J.
Reserved on :- 22nd April, 2016.
Pronounced on:- 29th April, 2016.

ORDER :

This is an appeal by the original plaintiff assailing the order dated 14.9.2015 passed in the Special Civil Suit No.28/2015/A, by which the learned Ad-hoc Senior Civil Judge, Mapusa had dismissed the application for temporary injunction as prayed for by him in a suit for declaration and permanent injunction.

2. Shri J. E. Coelho Pereira, learned Senior Counsel submitted that the plaintiff was secured with the ad-interim injunction order on 18.4.2015 which was discharged on 30.4.2015 giving rise to the Appeal From Order. The plaintiff had acquired right in the suit property consequent to the various Agreements comprising of the plots bearing

distinct numbers from 67 to 75 in the Survey no.79/0. He invited attention to the pleadings to show the derivation of right to the suit property and the finding rendered by the learned Trial Court to show how it had erred in holding against him. The learned Trial court had placed undue reliance on the schedule and covenant of the Agreement and arrived at a erroneous finding which was contrary to the records. He relied in **Dalpat Kumar Vs. Prahlad Singh**, [AIR 1993 Sc 276]; **Hindustan Petroleum Corpn. Ltd Vs. Sriman Narayan and another**, [(2002)5 SCC 760]; **Anand Prasad Agarwalla Vs Tarkeshwar Prasad and others**, [(2001) 5 SCC 568]; to press for the reversal of the order.

3. Shri S. S. Kantak, learned Senior Counsel invited attention to the very same pleadings and the claim of the plaintiff to the suit plots and showed how the suit plots were not at all in the possession of the plaintiff much less his ownership. He adverted to the Consent Decree to which the plaintiff was a signatory which would completely rule out his claim to the suit plots as the Consent Decree had not been challenged in a separate suit. He referred to the compilation of the various Agreements to bring clarity to the case at hand and wrapped up his arguments by submitting that no interference was called for with the impugned order and the appeal was liable for dismissal.

4. The plaintiff carved a case to the suit plots with the

defendant no.3 on the basis of an initial Agreement dated 5.4.1991 entered into by Guilhermina and her son Arun on the one hand, the Pinto family on the other each having half right to the larger property bearing survey no.77/0/77/1, pursuant to which there was an Agreement to sell the property for the total consideration of ₹2,00,00,000/- (Rupees two crores only) and by which the plaintiff and the defendant no.3 had paid ₹1,00,000/- (Rupees one lakh only) to Guilhermina and her son Arun and ₹1,00,000/- (Rupees one lakh only) to the Pinto family followed by an additional payment of ₹16,94,500/- (Rupees sixteen lakhs ninety four thousand five hundred only).

5. The plaintiff claimed a derivation of possession in respect of the suit property from 5.4.1991 followed by the subsequent Agreement of 14.7.1991 entered into by him and the defendant no.3 on the one hand and the defendant no.24 as their nominee on the other pursuant to which the nominee was supposed to pay ₹37,00,000/- (Rupees thirty seven lakhs only) to the plaintiff and the defendant no.3 and in lieu thereof an area admeasuring 27,465 sq. mts was reserved in their favour from the larger property bearing survey no.77/0. The plaintiff also claimed that there was a third Agreement dated 12.11.1991 by Guilhermina and her son Arun, the Pinto family, the plaintiff and the defendant no.3, and the nominee by which the suit plots nos.67 to 75 numbering 9 were retained in favour of the plaintiff and defendant no.3 and in respect of which he was in peaceful and exclusive possession.

6. At the same time the plaintiff conceded that there was also another Agreement to release the plots in favour of the nominee and thereby the earlier Agreements dated 5.4.1991 and 14.7.1991 stood expressly modified. It was the case of the plaintiff that there was yet another Agreement of February,1992 to which the Pinto family were signatories who were not signatories to the earlier Agreement dated 12.11.1991. There was a Memorandum of Understanding dated 1.11.1989 between the defendant no.25, the Pinto family and Guilhermina and her son Arun and the said defendant no.25 filed a suit being Special Civil Suit No.105/1992/A to which the plaintiff and the defendant no.3 and the Nominee were also parties but the defendants no.1 and 2 were not the parties to the suit. Arun was deleted from the said pleadings by the defendant no.25 based on the affidavit of Guilhermina that he had expired leaving her as his sole heir thereby negating any nexus of the defendants no.1 and 2 either with the larger property or with the said Guilhermina.

7. Another Agreement dated 29.8.1992 being the fifth Agreement was entered into between the plaintiff and the defendant no.3 on the one hand and the nominee i.e. the defendant no.24 on the other pursuant to which the prohibition imposed of non-creation of any third party rights by the Agreement of 14.7.1991 was modified. There was yet another Agreement dated 14.9.1992 between the

plaintiff and the defendant no.3 on the one hand and the nominee i.e. the defendant no.24 on the other pursuant to which the plots contained in clause 3(a)(iii) were solely retained for the plaintiff and the defendant no.3. It was the plaintiff's case that the order passed in the Special Civil Suit no.105/1992/A was challenged by the defendant no.25 by filing an Appeal from Order No.72/1992 in this Court and during its pendency, consent terms were filed before this Court and also before the Court of the Senior Civil Judge by which the suit was disposed off by the decree dated 7.10.1992.

8. It was the plaintiff's case that the defendants no.1 and 2 got themselves surreptitiously added as the defendant nos. 21(a) and (b) in the second suit without carving out their relationship either with Guilhermina or Arun or their connection with the larger property. The plaintiff did not know about the fraud played by the defendants no.1 and 2 to seek their impleadment in the second suit and bonafide signed the consent terms. It was his case that as per the consent terms in that suit, the nominee i.e. the defendant no.24, Guilhermina, the plaintiff, defendants and the Pinto family were to perform certain obligations and transfer certain portion of the larger property to the defendant no.25. He was allotted 19 plots all of which were actually allotted to the plaintiff and the defendant no.3 in terms of the Agreement dated 29.8.1992 and 14.9.1992. It was the plaintiff's case that in terms of the consent terms and the various Agreements, the

plaintiff and the defendant no.3 were in exclusive possession of the suit property.

9. It was only in 2011 when one Mr. Ismail Shah started interfering with the suit property was the plaintiff constrained to file a suit being the Regular Civil Suit No.237/2011/A before the Senior Civil Judge, Mapusa which came to be disposed off by the decree dated 4.2.2012 whereby he was declared to be owner in possession of the suit property. There was a case of interference in the suit property noticed by him prior to **December, 2014** and thereafter in **April, 2015** and he was compelled to file a suit for the reliefs as claimed therein including that for interlocutory injunction against the defendants no.1 and 2 in particular.

10. A cursory perusal of the first Agreement dated 5.4.1991 between Guilhermina and her son Arun on the one hand, the Pinto family on the other and the plaintiff and the third defendant on the third was for the purchase of the property surveyed under no.77/0 amongst others for the total consideration of ₹2,00,00,000/- (Rupees two crores only) and in which there was a reference to the Memorandum of Understanding drawn between the defendant no.25 on the one hand and the Pinto family dated 1.11.1989 in respect of the suit property. The second Agreement dated 14.7.1991 was between the plaintiff and the defendant no.3 on the one hand, their nominee, i.e.

the defendant no.24 on the other hand in continuation of the earlier Agreement dated 5.4.1991 by virtue of which the defendant no.24 as the nominee had agreed to pay the total consideration of ₹2,37,00,000/- (Rupees Two crores thirty seven lakhs only) in respect of the said property whereby amongst other terms the plaintiff and the defendant no.3 were to retain a plottable area of 27,465 sq. mts as shown in the plan with a prohibition on them from selling or agreeing to sell or mortgage or dispose off the said plot in any manner whatsoever.

11. The next Agreement dated 12.11.1991 was between Guilhermina and her son Arun on the one hand, the family of Pinto on the other and the plaintiff and the defendant no.3 as the third party as also the nominee i.e. the defendant no.24 whereby the Agreement dated 5.4.1991 and clause (4) thereof were modified whereby the defendant no.24 was entitled to enter into an Agreement of sale in respect of not only the other plots from the survey no.77 but also in respect of the plots no.67 to 75 i.e. the suit plots amongst others. The Agreement of 27.2.1992 was between Guilhermina and her son on the one hand, the family of Pinto on the other, the plaintiff with the defendant no.3 as the third party and the defendant no.24 as the party of the fourth part to which the Pinto family were signatories unlike the earlier Agreement dated 12.11.1991. This Agreement was an amendment to that dated 5.4.1991 and without any changes in the Agreement dated 12.11.1991.

12. The crucial Agreement is that dated 29.8.1992 entered into between the defendant no.3 and the plaintiff on the one hand, the defendant no.24 on the other which adverted to the Agreement of 5.4.1991, that dated 14.7.1991 and pursuant to which the defendant no.24 had released the plottable area of 27,465 sq. mts and brokerage plots admeasuring 10,263.75 sq. mts as described in the schedule in favour of the plaintiff and the defendant no.3. The second schedule as rightly pointed out by learned Senior Counsel Shri S. S. Kantak, excluded the suit plots nos.**67 to 75** of the survey no.77 and also shown in the schedule indicating the total area allotted in their favour as 37,728.57 sq. mts including the brokerage area of 10,263.57 sq. mts. The last of the Agreement was dated 14.9.1992 between the defendant no.3 and the plaintiff on the one hand and the defendant no.24 on the other which referred to the Agreement dated 5.4.1991, that dated 14.7.1991 reserving 27,465 sq. mts. in favour of the plaintiff and the defendant no.3 and at that time including the suit plots 67 to 75 in terms of clause 3(a)(iii) of the Agreement dated 12.11.1991 and ultimately providing that by the amended Agreement dated 29.8.1992 that the plots admeasuring 27,465 sq. mts and the brokerage plots of 10,263.57 sq.mts described in the second Schedule were retained in favour of the plaintiff and the defendant no.3 which again did not include the suit plots nos.**67 to 75**.

13. That apart, it is not in dispute that an Appeal from Order was filed by the defendant no.25 before this Court where consent terms were filed and pursuant to that the defendants no.21(a) and(b) were added as the respondents no.21(a) and (b) in the appeal. These consent terms adverted to the Agreements dated 5.4.1991,14.7.1991, 12.11.1991, 27.2.1992, 29.8.1992 and 14.9.1992 annexed thereto and carved out the plots allotted in favour of the defendant no.25 admeasuring 6488 sq. mts, those allotted to the Pinto family and to the defendants no.21(a) and (b) which included the suit plots nos.**67 to 75**. The suit filed by the defendant no.25 was admittedly decreed on 7.10.1992 pursuant to which the defendants no.21(a) and (b) who were joined as the respondents in the appeal were added as the defendants in the suit and it was agreed and understood between the parties to the suit to which the plaintiff and the defendant no.3 too were parties that the plots earmarked in favour of the defendants no.21(a) and (b) were listed in the annexure 2 and marked in the plan and to which they had perfected their title.

14. It was also agreed that the defendants no.21(a) and (b) shall execute the deed of conveyance in respect of the other plots. The defendant no.24 who is the respondent no.24 in this appeal was to comply with his obligations towards the plaintiff and the defendant no.3 arising out of all their Agreements including those dated 14.7.1991, 29.8.1992 and 14.9.1992 subject however to an area of 6488 sq. mts

to be set off against the claim of the defendant no.25. This consent decree was not challenged by the plaintiff herein alongwith the defendant no.3 and which had attained finality although the plaintiff has claimed that the consent terms were filed before this Court by the defendants no.1 and 2 getting themselves surreptitiously included in the proceedings. Such a contention cannot stand the test of scrutiny when the plaintiff did not challenge the proceedings nor the consent decree which were drawn before the Civil Court some days later and it had attained finality and binding on them.

15. The plaintiff with the defendant no.3 had not challenged the same as rightly contended by learned Senior Counsel Shri S. S. Kantak and thus were binding on the plaintiff and the defendant no.3. Therefore from the records it can clearly be concluded even on a prima facie assessment that the plaintiff had failed to carve out any right to the suit plots. The contention, therefore of learned Senior Counsel Shri J. E. Coelho Pereira that the learned trial Judge had not properly appreciated the matter in its proper perspective or that the learned Judge had given erroneous findings cannot stand the test of scrutiny. Quite on the contrary, it must be observed that the learned trial judge had properly construed the Agreements and held that the plaintiff had not carved any right to the suit plots. It also does not lie in the mouth of the appellant to contend that the learned trial Judge had placed undue reliance on the schedule and not the covenants of the

Agreements.

Quite on the contrary, the Agreements read as a whole with the covenants and the schedule forming an integral part thereto would support the finding of the learned trial Judge to hold that the plaintiff had not made out a case *prima facie* to the suit plots in question. The learned trial Judge was therefore, not at all in error to hold that the plaintiff had failed to establish a *prima facie* case and therefore, no question arose of considering the other factors of balance of convenience and irreparable loss or injury. No fault of whatsoever nature can be found with the appreciation of the material on record by the learned trial Judge and therefore, no interference is called for with the impugned order under challenge.

16. In **Dalpat Kumar** (supra), the Hon'ble Apex Court held that the exercise in the grant of injunction which is discretionary relief is subject to the Court satisfying itself (i) there is a serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled for the relief asked by the plaintiff/defendant; (ii) the Court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (iii) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction

will be greater than that would be likely to arise from granting it.

17. **Hindustan Petroleum Corp. Ltd** (supra), held that the Court is not to deal with the matter while deciding the relief of interlocutory injunction as if it is deciding the suit finally and the existence of the prima facie case was enough since the purpose of granting the interim injunction was to lessen the risk of irreparable injury and injustice which cannot be compensated for in terms of money and which would result from the violation by the defendant of some right by the plaintiff. This judgment with respect is clearly distinguishable on facts and particularly when the plaintiff in the present case has failed to carve out any right to the suit plots in particular.

18. In **Anand Agarwalla** (supra), the Hon'ble Apex Court held that it may not be appropriate to any Court to hold a mini-trial at the stage of grant of temporary injunction. Though there can be no dispute with the propositions culled out in these cases, nonetheless they do not advance the case of the appellant on any premise.

19. From the material on record therefore, the appellant had failed to carve out any case much less a prima facie case and the trial Court was justified in denying the relief of injunction. No interference is called for with the order under challenge and therefore, i pass the

following:-

ORDER

Appeal is dismissed and the impugned order dated 14.09.2015 is confirmed.

NUTAN D. SARDESSAI, J.

20. At this stage, Shri S. Karpe, learned Counsel appearing on behalf of the appellants pressed for the stay of this order to pursue his remedy before the appropriate Court.

21. Shri P. Talaulikar, learned Counsel appearing on behalf of the respondent vehemently opposed the grant of stay on the premise that the development/construction undertaken at the instance of the respondent no.25 has been standstill on account of the interim order operating in favour of the appellant and that the respondent no.25 is unduly prejudiced on that count.

22. Having heard both the learned counsels and considering that the appellant was secured with an interim order pending the hearing and disposal of the appeal, i find that it is appropriate in the circumstances to stay the operation of the order of this Court for a

period of four weeks subject however, to the appellant furnishing a Bank Guarantee in the amount of ₹25,00,000/- (Rupees twenty five lakhs only).

NUTAN D. SARDESSAI, J.

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