

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1157 OF 2016

MR. DOMINIC MARTIN LOBO AND ANR., ... Petitioners
Versus
MRS. MARIA AMALDINA LOBO E PEREIRA
AND ANR., ... Respondents

Mr. Ressano Hector Noronha, Advocate for the Petitioners.

Coram:- F. M. REIS, J.

Date:- 20th December, 2016

ORAL ORDER

Heard Mr. R. Noronha, learned Counsel appearing for the Petitioners.

2. The challenge in the above Petition is to an exparte ad-interim Order dated 27.05.2016 passed by the learned Addl. District Judge, (FTC), Mapusa, as well as the Order dated 30.09.2016 dismissing the application filed by the Petitioners under Order 39 Rule 4 of the Civil Procedure Code.

3. Mr. Noronha, learned Counsel appearing for the Petitioners, submits that in a suit filed by the Petitioners for declaration and other consequential reliefs, the Petitioners filed an application for temporary injunction, inter alia, restraining the Respondents from acting upon a Deed of Succession and interfering in the suit

property. Learned Counsel further submits that the application for temporary injunction came to be granted on 20.04.2016 by the learned Civil Judge, Junior Division at Mapusa. It is further pointed out that the Petitioners filed a Caveat Application before the learned District Judge on 05.05.2016 which was served on the Respondents on 07.05.2016 by registered post. It is further pointed out that despite of the Caveat notice, the Respondents who apparently filed an Appeal somewhere around 04.05.2016, obtained an ex parte ad-interim Order on 27.05.2016 without disclosing the receipt of the Caveat Application. The learned Counsel further pointed out that the Petitioners thereafter filed an application under Order 39 Rule 4 of the Civil Procedure Code for vacating the ad-interim Order which came to be dismissed by the subsequent Order dated 30.09.2016. Learned Counsel further pointed out that based on the disputed Succession Deed, the Respondents are illegally acting upon such document which is a fraudulent and null and void. Learned Counsel as such submits that grave injustice would occasion to the Petitioners in case the ad-interim Order passed by the learned Judge is allowed to stand.

4. I have considered the submissions of the learned Counsel and I have also gone through the records. The merits of the claim of the Petitioners are not being examined whilst disposing of the above Writ Petition. The only aspect which is to be considered is whether the learned Judge was justified to pass an ad-interim

exparte Order when a Caveat Application was filed by the Petitioners. No doubt, merely because a Caveat Application has been filed, by itself does not preclude the Court to pass an ad-interim Order in the interest of justice but, considering that the Caveat notice was received by the Respondents on 07.05.2016, it was incumbent upon the Respondents to disclose the receipt of the Caveat notice when the Respondents moved the learned Judge on 27.05.2016 to obtain ad-interim reliefs. It was the duty of the Office to bring to the notice of the learned Judge. This itself would be a case where the Respondents had suppressed a material fact to obtain an exparte Order when there was prima facie no urgency. It was incumbent upon the Respondents to intimate the Petitioners that the Respondents before seeking an exparte ad-interim relief on 27.05.2016 when the Caveat Application was already notified to the Respondents and the Order impugned was dated 20.04.2016.

5. Be that as it may, considering the Order impugned is an ad-interim Order, the question of this Court interfering in such Orders at this stage under Article 227 of the Constitution of India, would not be justified. Hence, I find it appropriate to dispose of the above Writ Petition by directing the learned Lower Appellate Court to dispose off the Appeal filed by the Respondents as expeditiously as possible and, in any event, within two months from the date of receipt of this Order.

6. Petition stands disposed of accordingly.

F. M. REIS, J.

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