

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 123 OF 2014

SMT. RUKMINIBAI KRISHNARAO RANE
SARDESAI AND 30 ORS.,

... Petitioners

Versus

SHRI GAUTAM RAMANBAI PATEL AND 13
ORS.,

... Respondents

Mr. S. P. Munj, Advocate for the petitioners.

Mr. R. G. Ramani, Advocate for respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 13th June, 2017

P.C.

The petitioners are the defendants in Special Civil Suit No.46/2008/A, pending before the learned Ad hoc Civil Judge, Senior Division at Bicholim, which is a suit filed by respondent nos.1 and 2 for specific performance of an Agreement of Sale. The plaintiffs sought Temporary Injunction restraining the defendants from creating third party interest in the suit property. In support of the application, the plaintiffs filed an affidavit of one Mr. Dennis D'Souza, who claims to be a Business Associate of plaintiff no.1 and was assisting plaintiff no.1 in locating properties having a potential for development and was also keeping vigil over the properties purchased/ agreed to be purchased by plaintiff no.1. In the affidavit, Dennis D'Souza claimed that on 24/02/2013, he had gone to inspect the suit

property known as 'AMBOTONEM' when he found that the son of defendant no.2 along with two other persons were moving around the said property, showing the said plots, which are agreed to be purchased by the plaintiffs.

2. In the application for Temporary Injunction, the plaintiffs claimed that on 24/02/2013, when Mr. Dennis D'Souza had been to the suit plots, he found defendant no.2 Shri Babasaheb Rane Sardessai along with two other persons in the suit plots, where the defendant no.2 was showing the boundaries of suit plot to other two persons, who were present with him. In short, according to the petitioners, there is apparent discrepancy between the affidavit of Dennis D'Souza and the averments in the application for Temporary Injunction, namely Dennis D'Souza claims that he found son of defendant no.2 while in the application for Temporary Injunction, it is claimed that it was defendant no.2, who was showing the plots to two other persons. In such circumstances, the original defendant nos.1 to 39 filed an application (Exh.52) for calling Dennis D'Souza for cross-examination, which application has been dismissed by the learned Trial Court by the impugned order.

3. On hearing the learned Counsel for the parties and on perusal of the record, it appears that the learned Trial Court has found that at the stage when the application for Temporary

Injunction was under consideration, the provisions of Order XIX Rules 1 and 2 of C.P.C. cannot be applied or called into aid. The learned Trial Court has further observed that during the course of hearing, the petitioners/ defendants can show that affidavit of Mr. Dennis D'Souza is false as it is based on imaginary facts. The learned Trial Court has further found that there is no other affidavit filed by Mr. Dennis D'Souza, which shows any contrary contents and for all these reasons, the said witness cannot be called for cross-examination.

4. On considering the circumstances and the submissions made, I do not find that the impugned order suffers from any infirmity. This is not a case, where the same witness has sworn another affidavit, of which the contents may be contradictory. It is always open, as has been observed by the learned Trial Court, for the petitioners to argue and demonstrate at the hearing of the Temporary Injunction application that the affidavit of Mr. Dennis D'Souza is not reliable.

5. With this, no case for interference is made out. Writ Petition is, accordingly, dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA