

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 202 OF 2017

MR. TEODORICO LUDOVICO CAMILO
FERNANDES AND ANR.,

... Petitioners

Versus

MR. WALTER ANTONIO OTAO FERNANDES
AND 17 ORS.,

... Respondents

Mr. Arjun F. Naik, Advocate for the petitioners.

Mr. M. B. D'Costa, Senior Advocate with Ms. K. Betquecar,
Advocate for respondent nos.1 to 5, 7 to 17.

Coram:- C. V. BHADANG, J.

Date:- 14th June, 2017

P.C.

Respondent nos.1 and 2 (original plaintiffs) filed a suit against the petitioners (original defendant nos.1 and 2) and respondent nos.3 to 17 (who are defendant nos.3 to 17 before the Trial Court), for partition and injunction. For the sake of convenience, the parties are referred to in their original capacity.

2. The plaintiffs filed two applications before the Trial Court being Applications Exh.D-37 and D-38 respectively for Temporary Injunction and appointment of Receiver. Both these applications were rejected by the Trial Court by an order dated 31/07/2014. Respondent nos.1 and 2 challenged the said order by filing two separate appeals being Miscellaneous Civil Appeal

Nos.92/2014 and 93/2014. The District Judge, by a common order dated 04/09/2015, dismissed Miscellaneous Civil Appeal No.92/2014, while allowing Miscellaneous Civil Appeal No.93/2014. The net result was that the learned District Judge confirmed the order of dismissal of the application for Temporary Injunction and allowed the application for appointment of the Receiver. The learned District Judge directed the parties to suggest the names for appointment of Receiver. This was challenged by the petitioners before this Court in W.P.No.871/2015. This Court, by a detailed judgment and order dated 11/01/2016, dismissed the said Writ Petition. Thus, the order of appointment of Receiver has attained finality as the matter is not carried any further. While dismissing the said Writ Petition, this Court noted that the petitioners had also placed the names of the persons, who could be considered for appointment of Receiver before the District Court. In other words, this Court found that the petitioners had subjected themselves to the order passed by the District Court regarding appointment of Receiver.

3. It appears that the matter continued before the learned District Judge, who has subsequently passed two orders, one dated 04/11/2015 and the other dated 11/08/2016. By the order dated 04/11/2015, the learned District Judge appointed Father Emidio Pinto, a Parish Priest of Goa Velha Church (respondent no.18) as the interim Receiver (considering the will of the

Testator). By the order dated 11/08/2016, the learned District Judge, inter alia, allowed an application filed by the Receiver directing the petitioners (respondents before the learned District Judge) to hand over the keys of the subject structure, which is a chapel, within 15 days, failing which, the Receiver was to take custody of the structure by breaking the lock and replacing it with a new lock. Respondent no.18 has filed an affidavit (marked 'X' for identification), stating that the Receiver has taken possession of the Chapel on 27/08/2016. This aspect is not disputed on behalf of the petitioners.

4. The petitioners, feeling aggrieved by the orders dated 04/11/2015 and 11/08/2016, have filed this petition.

5. I have heard Shri Naik, the learned Counsel for the petitioners and Shri D'Costa, the learned Senior Counsel for respondent nos.1 and 2, who are the contesting respondents. It is undisputed that respondent nos.3 to 17, who are the co-defendants, are supporting the plaintiffs. With the assistance of the learned Counsel for the parties, I have gone through the record and impugned orders passed.

6. It is submitted by the learned Counsel for the petitioners that after the Appellate Court decided Misc. Civil Appeal Nos.92 and 93 of 2014, the Appellate Court could not have continued the

proceedings before it for appointment of interim Receiver and directed obtaining of the possession of the subject structure. It is submitted that these proceedings ought to have been taken before the learned Trial Court, once the application for appointment of Receiver stood allowed. It is next submitted that the petitioners have filed a separate suit against respondent no.18 and as such, the interest of the petitioners and the respondent no.18 are adverse and the respondent no.18 could not have been appointed as interim Receiver. Except this no other contention is raised.

7. Shri D'Costa, the learned Senior Counsel for the respondent nos.1 and 2 points out para 15 of the judgment of this Court in W.P.No.871/2015. It is submitted that this Court has not interfered with the order by which the learned District Judge had directed the parties to suggest the names of the persons, who could be appointed as the Receiver and once that order having become final, it is not now open to the petitioners to claim that the proceedings could not have been continued before the learned District Judge. It is next submitted that all that the learned District Judge has done is that interim Receiver has been appointed. The learned Senior Counsel points out that in any event, in as much as the suit is pending before the Trial Court, it will be open for the petitioners to raise the appropriate challenge against the continuation of the Father Emidio Pinto as the interim Receiver before the Trial Court and the Trial Court can be

directed to decide the same in accordance with law, after hearing the parties.

8. I have carefully considered the circumstances and the submissions made.

9. It is pertinent to note that the order of appointment of Receiver, as passed by the learned District Judge, has been confirmed by this Court. This Court has also taken note of the fact that the petitioners had subjected themselves to the said order of the District Court, by suggesting the names of the persons, who could be appointed as Receiver. That apart, the interim Receiver has also taken possession of the subject premises on 27/08/2016. In such circumstances, I am not inclined to interfere with the interim order. In other words, no interference is called for in so far as the need to appoint an interim Receiver. If the petitioners have any objection for appointment and continuation of Dr. Emidio Pinto as the interim Receiver, it will always be open to the petitioners to file their objection, if any, to the continuance of Father Emidio Pinto as the interim Receiver, if so advised, before the Trial Court. The Trial Court shall decide the application, if so filed, in accordance with law, after hearing the parties.

10. With this, the petition is disposed of, with no order as to

costs.

11. All the contentions of the parties are kept open.

C. V. BHADANG, J.

SMA