

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 17 OF 2016

MRS. ANACLETA LIDIA PIEDADE
FERNANDES AND 2 ORS.,

... Appellants

Versus

MR. NIKHIL RADHESH KENAVDEKAR AND
4 ORS.,

... Respondents

Mr. Ashwin D. Bhobe and Ms. S. Bhobe, Advocates for the appellants.

Mr. Devidas J. Pangam, Advocate for respondent nos.1 to 3.

Mr. V. Rodrigues, Advocate for respondent no.4.

Coram:- C. V. BHADANG, J.

Date:- 5th June, 2017

P.C.

Heard Shri Bhobe, the learned Counsel for the appellants, Shri Pangam, the learned Counsel for respondent nos.1 to 3 and Shri Rodrigues, the learned Counsel for the fourth respondent.

2. The present appeal is filed by the original plaintiffs, challenging the order dated 23/02/2016, by which the application for Temporary Injunction filed by the appellants, has been dismissed. The appellants had sought an injunction restraining the respondents/ defendants from effecting repairs and changing the nature of the suit property and further restraining them from creating third party interest.

3. The learned Counsel for the appellants, in all fairness, does not dispute that the repairs are complete and as such the first prayer would not survive. In so far as the second prayer is

concerned, it is submitted that the learned Trial Court was in error in holding that the appellants were not the co-owners of the suit property.

4. The learned Counsel for the respondents submit that the sale deed in favour of the appellants shows that the appellants have purchased only first floor of the concerned building and as such, they cannot claim any right in respect of the structure on the ground floor, which is the subject matter of dispute. It is submitted that in any event, the provisions of Section 52 of the T. P. Act, would apply. The learned Counsel submit that in the event the respondents intend to sell the suit property, they shall give prior intimation of the same to the Trial Court. In such circumstances, the appeal is disposed of. Needless to mention that the transfer, if any made, shall be subject to lis pendens under Section 52 of T. P. Act. By consent of the parties, it is directed that the respondents shall give prior intimation of any such sale to the Trial Court. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

SMA