

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1063 OF 2018

MOHAN VERNEKAR, REP. BY ITS POA,
PRAVIN VERNEKAR AND ANR., ... Petitioners

Versus

RAGHUVIR S. VERNEKAR AND 2 ORS., ... Respondents

Shri Shailesh Redkar, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 12th December 2018

ORAL ORDER:

By this petition, the petitioners/plaintiffs are challenging the order below Exhibit D-19 dated 06.01.2017, by which, the Trial Court has refused to recall its earlier order dated 24.03.2015. By the order dated 24.03.2015, the Trial Court had permitted unconditional withdrawal of Regular Civil Suit No. 24/2014, filed by the petitioners, against the respondents.

2. The petitioners had previously filed Regular Civil Suit No. 25/2007, for a declaration that the deed of gift, executed by the respondent nos. 1 and 2 in favour of the respondent no. 3 dated 28.07.2006, is null and void. The case made out by the petitioners was that the suit property was sold by them to respondent no. 1 and to one Narayan Vernekar vide sale deed dated 30.08.1990. It was contended that the respondent no. 1,

without the consent and permission of his legally wedded wife had fraudulently executed the gift deed dated 28.07.2006 in favour of the respondent no. 3.

3. The learned Trial Court by an order dated 12.12.2008 had rejected the plaint in the said suit under Order VII, Rule 11(a) and (d) of the Code of Civil Procedure (CPC, for short). The Trial Court held that admittedly, the petitioners had no right, title or interest of whatsoever nature in the suit property, as it was already sold by them by registered sale deed to the respondent no. 1 on 30.08.1990.

4. The petitioners filed yet another suit being Regular Civil Suit No. 24/2014 for a similar relief of declaration that the gift deed dated 28.07.2006 is null and void. Subsequently, the petitioners filed an application dated 24.03.2015, seeking permission to withdraw the suit as according to the petitioners, there were certain 'technical defects', in the suit and therefore, the petitioners did not want to proceed with the suit. The learned Trial Court by an order 24.03.2015, allowed the withdrawal of the suit, subject to costs of Rs.5,000/- to the respondents.

5. It appears that the respondent no. 3 filed an application purportedly under Section 15(2) of the Contempt of Courts Act, against the petitioners, before the Trial Court, for non

compliance with the said order as to the payment of costs. The learned Trial Court by an order dated 26.06.2015 made a reference to this Court, which was registered as Contempt Petition (Main) No. 17/2016. On 24.06.2016, a statement was made on behalf of the present petitioners that they will deposit the costs of Rs.5,000/- and as such, the petition was disposed of. Undisputedly, the petitioners have deposited the costs of Rs.5,000/- and the order stands complied with.

6. On 19.07.2016, the petitioners filed an application for recall of the order dated 24.03.2015, on the ground that the suit was withdrawn on incorrect legal advice. By the impugned order, the learned Trial Court has dismissed the said application. Hence, this petition.

7. I have heard Shri Redkar, the learned Counsel for the petitioners and perused record. It is clear that the plaint in the earlier suit filed by the petitioners for similar reliefs, was rejected, which order has attained finality. The petitioners filed a second suit for same reliefs, which was withdrawn, subject to costs, which have already been deposited and thus, the petitioners have subjected themselves to the order passed. After more than a year thereof, the petitioners applied to the Trial Court for recall of the order on the grounds which were never made out earlier while withdrawing the suit. The suit was

unconditionally withdrawn as according to the petitioners, the suit had some technical defects. Even after the passing of the order dated 06.01.2017, the petitioners have approached this Court in July, 2017 in this petition. In any event, the facts as set out above show that the present petition is a clear abuse of the process of the Court. No case for interference is made out. The petition is dismissed.

C. V. BHADANG, J.

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