

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 314 OF 2018

1. Rajaninath Shrikant Shirodkar
 @ Rajanikant Shrikant Shirodkar
 @Rajnikant Surya Shirodkar
 @ Rajanikant Surya Shirodkar
 61 years of age,
 r/o H. No. 1172,
 Near Maruti Temple, Thal,
 Shiroda, Ponda – Goa.

 2. Smt. Nandini Rajaninath alias
 Rajanikant Shirodkar,
 d/o Shri Narendra Ramchandra Bhosale,
 64 years of age,
 wife of Suresh Salunkem
 61 years of age,
 r/o. H. No. 1172,
 Near Maruti Temple, Thal,
 Shiroda, Ponda, Goa.
- ... Petitioners

V e r s u s

Shree Kamakshi Saunsthan,
 Through its Attorney
 Mr. Pradeep Ramakrishna Kamat Budkule,
 Son of Ramakrishna Kamat Budkule,
 Major in age,
 Having office at
 Shree Kamakshi Devasthan Thal,
 Shiroda, Ponda, Goa.

... Respondents

Shri A. D. Bhobe, Advocate for the Petitioners.

Shri R. G. Ramani, Advocate for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved for Order on : 19 March 2018
Pronounced for Order on : 23 March 2018

ORDER

This petition takes exception to the order dated 27.11.2017 passed by the learned District Judge-2, Panaji, sitting at Ponda, pursuant to which he dismissed the appeal filed by the petitioners and consequently maintained the order dated 16.03.2017 passed by the learned Senior Civil Judge, Ponda, dismissing his application for injunction against the respondents herein.

2. Heard Shri A. D. Bhole, learned Advocate for the petitioners who submitted that he was the owner in possession of the property surveyed under no.526/1 admeasuring 9200 square metres having inherited the same from Nanu Pandharinath Shirodkar in the Inventory Proceedings of 1964. No doubt, the survey records Form I and XIV did not show his name in the occupants column but there was due reference to the house in the other rights column in the name of Shrimati Shirodkar. The property bearing survey no.526/1 with the distinct boundaries was inscribed under no.11886 in the name of the said Pandharinath S. Gan. The respondents claimed right to the said property without any title unlike the petitioners who derived a title through Pandharinath in whose name the property stood inscribed under no.11886 and bearing Description no.14453. The plea of the respondents

was that the inventory proceedings were not a document of title and the adoption deed pursuant to which the petitioner was taken in adoption was not registered. The Trial Court held against him that the suit property was not identified and that the inventory proceeding was not a document of title. The District Court which was the Appellate Court did not exercise the jurisdiction properly and accordingly reiterated the findings rendered by the Trial Court. The respondents relied on the report of an expert who was an Architect/Engineer and not authorised to verify the title and therefore the report of the expert could not be treated as a title document. The impugned order had therefore to be quashed and set aside and the petitioners secured with the order of injunction to restrain the respondents from carrying on any construction activity in the suit property.

3. Shri R. G. Ramani, learned Advocate for the respondents submitted that the plaintiff had to stand on the strength of his own case and could not look into the pleadings of the defence. He adverted to the pleadings in the plaint and submitted that there was fraud committed to mislead the Court viz the Description document no.11886 with the suit property surveyed under no.526/1. Assuming that the petitioner had derived title to the property at item no.3

consequent to the Inventory Proceedings No.3 of 1964, the same bore Land Registration No.8320 and was enrolled in the Matriz under no.262 which did not at all correspond with the suit property surveyed under no. 526/1. The petitioner had not produced the Description of the property and any contemporaneous document to show that it had tallied with the suit property surveyed under no.526/1 and hence his claim to the suit property was without any basis. The property bearing Inscription no.11886 in the name of Nanu Pandharinath was described under no.14453 and which did not at all correspond to the suit property. However, the survey records of the property bearing no.526/1 showed the name of the respondents as the occupants and which alongwith survey no.1/28 corresponded to the old Cadastral Survey no.377 which was recorded in their name. He adverted to the Matriz no.695 which pertained to the property with distinct boundaries to show that it was inscribed in favour of Pandharinath V. Gan from Shiroda. The Trial Court had rightly not found any prima facie case being made out by the petitioner qua his right to the suit property. The Appeal filed before the District Court was that on principle challenging the order of the Trial Court dismissing the injunction application and the District Court had rightly not substituted its discretion by reversing the finding of the Trial Court. There was no scope

for interference in this petition where the concurrent findings of facts were rendered by the Courts below. There was no illegality or perversity in the impugned order and therefore the petition had to be dismissed. Shri R. G. Ramani learned Advocate for the respondents also referred to the pleadings in the written statement to substantiate his case in defence.

4. Shri A. D. Bhobe, learned Advocate for the petitioners in reply contended that the boundaries in item no.4 of the inventory proceedings tallied with the boundaries in the property bearing Description no.14453. There was no basis for the Trial Court to record a finding that there was a dispute on the identity of the property and when he had clearly spelt out his case to that effect in the rejoinder. He next raised query as to how the respondents could claim title to the suit property on the basis of the old Cadastral Survey Plan no. 377 and concluded his argument pressing for the granted of his petition.

5. i have considered the submissions of Shri A. D. Bhobe, learned Advocate for the petitioners and Shri R. G. Ramani, learned Advocate for the respondents and perused the records. Without going into the controversy on the identity of the petitioner which was sought to be raised by Shri

R. G. Ramani, the moot question would be on the identity of the suit property, the petitioner claiming right to it on the basis of his pleadings that he had acquired right to the property pursuant to the Inventory Proceedings no.3/1964 instituted on the death of Nanu Pandharinath Shirodkar. As per the pleadings, the property at item no.3 which came to be allotted with the distinct boundaries bore the Land Registration Office no.8320 and enrolled in the Matriz under no.262. For all his efforts to claim right to the suit property surveyed under nos.526/1 in particular, the petitioners had not produced the Land Registration Certificate of the property bearing no.8320 nor the Matriz no.262 on record much less showing its correspondence to the suit property bearing survey no.526/1. Therefore, a reference by him to the property bearing survey no.526/1 in para 1 of the plaint and as bearing Inscription no.11886 and Description no.14453 would not enure to his benefit when there is no co-relation shown between the property bearing Inscription no.11886 with that bearing Land Registration no.8320 in which he had acquired right pursuant to the inventory proceedings. Furthermore, the Inscription of the property bearing no.11886 showing that it stood inscribed in favour of Nanu Motu Bailadeira and described under no.14453 consequent to a gift in her favour by Pondorinata Vencti Gan would not buttress his case that this was the

property in which he acquired right consequent to the inventory proceedings.

6. The survey records of survey no.526/1 at the highest shows that one Smt. Baie P. Shirodkar had her name recorded in the other rights column in respect of a house occupied by her while the name of the respondents was recorded as the occupant in respect of all the sub-divisions of survey no.1 including survey no. 526/1. The Trial Court on the basis of the documents produced on record clearly held that the Inventory Proceedings no.3 of 1964 did not help the case of the petitioners even prima facie to establish that the house described and allotted to the petitioners in the inventory proceedings is the house existing in the suit property. The learned Trial Judge found that the petitioners had failed to prima facie establish a right in the suit property or his possession thereto and on that premise rejected the application for injunction. The learned District Judge while considering the Misc. Appeal challenging the order of dismissal of injunction, considered the case of the petitioners and the respondents including the old Cadastral Survey Plan no.377 apart from the report drawn by the Architect/Engineer and found that the petitioners claimed right to the suit property on the basis of the Inventory Proceedings no.3 of 1964 and the

adoption deed of 1956 and that the Trial Court had rightly held that the inventory proceedings of 1964 did not help the petitioners to prove a prima facie right to the house and the property and that it could not form the basis of title. The learned District Judge found no fault to interfere with the findings recorded by the Trial Court and in that view of the matter having concluded that the petitioners had not identified the suit property based on the land registration document, dismissed the appeal confirming the order of the learned Trial Court.

7. The contention now of Shri A. D. Bhohe that the boundaries in the item no.4 tally with the boundaries in the inscription document, is not at all a plausible argument nor does it negate the findings rendered by the Courts below that the petitioners had failed to establish the identity of the suit property. It is also not open to the petitioners to shift the burden onto the respondents to prove their title to the suit property when the petitioner as the plaintiff had to stand or fall by his own pleadings and make out a case that he had title to the suit property and that there were acts of interference by the respondents and that he was entitled to protect his possession by an equitable order of injunction in his favour. The petitioner has failed on all counts to establish

his prima facie title to the suit property and that there were acts of interference with his possession as to entitle him to the relief of injunction.

8. In the result, i pass the following :

ORDER

The petition is dismissed with no order as to costs.

NUTAN D. SARDESSAI J.