

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.625 of 2018

1. Smt. Shrimati Ranganath Kavlekar,
Widow of Ranganath Madhu Kavlekar,
67 years of age,
 2. Shri Dinanath R. Kavlekar,
son of Ranganath Kavlekar,
48 years of age,
 3. Smt. Nalini D. Kavlekar,
Wife of Dinanath Kavlekar,
35 years of age,
 4. Shri Chudu Madhu Kavlekar,
69 years of age,
 5. Smt. Vijaya Chudu Kavlekar
Wife of Chudu Kavlekar,
64 years of age,
all Indian Nationals,
all residents of H. No.877,
Near Ganesh Temple,
Mandur, Dongrim,
Tiswadi-Goa
- .. Petitioners

Vs.

1. Shri Harish Guno Kavlekar
major of age,
 2. Smt. Kalpana Harish Kavlekar,
major of age,
both residents of Near Temple
of Shasti Shantadurga,
Dhakebhat, Dongrim,
Mandur, Tiswadi-Goa
- .. Respondents.

Shri V. P. Thali and Shri Shirin Naik, Advocates for the
Petitioners.

Shri A. D. Bhobe, Advocate for the respondent nos.1 and 2.

CORAM :- C. V. BHADANG, J.

Date : 14th June, 2018

ORAL JUDGMENT :

Rule, made returnable forthwith. The learned Counsel for the respondents waives service. Heard finally by consent of parties.

2. The present petition can be disposed of on short count. The petition challenges the judgment and order dated 07/05/2018 passed by the learned District Judge at Panaji in Misc. Civil Appeal No.10/2017. The learned District Judge, while allowing the appeal, has granted injunction in favour of the respondents and against the petitioners. The application for injunction filed by the respondents was earlier dismissed by the learned Trial Court.

3. On hearing the learned Counsel for the parties, it is apparent that after the application for injunction was dismissed by the Trial Court, the suit being Regular Civil Suit No.14/2013 also came to be dismissed in default on 10/08/2017. It can, thus, be seen that on the date on which the appeal came to be allowed on 07/05/2018, the suit was not pending. Thus, the appeal itself had become infructuous, once the suit out of which the appeal arose, was dismissed in default and was no longer pending. In fact, it

was necessary for the parties to have pointed this out to the learned District Judge. However, the lapse on that count, cannot lead to any different result.

4. The learned Counsel for the respondents submits that an application for restoration of the suit along with an application for condonation of delay is filed and is pending before the Trial Court. It is for the learned Trial Court to decide those applications on their own merits. Thus, the impugned order passed by the learned District Judge, in my considered view, cannot be sustained. In the result, the following order is passed :

- (i) The petition is, accordingly, allowed.
- (ii) The impugned order is hereby set aside.
- (iii) It is made clear that this Court has not examined the merits of the rival contentions of the parties.
- (iv) In the event the suit is restored, it will be open for the respondents to file fresh application for temporary injunction on the same cause of action. If such an application is filed, the Trial Court shall consider the same, on its own merits, and in accordance with law.
- (v) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.