

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NOS. 951 & 953 OF 2017**

Shri Ramesh Gupta & Another Petitioners
Versus
Chandralekha Jawahar Karanjia & Others Respondents

Shri Menino Pereira, Advocate for the Petitioners.

Shri Gaurish Agni, Advocate for the Respondent No. 1.

CORAM : C.V. BHADANG, J.

DATE : 10th OCTOBER 2018

ORAL ORDER:

Although, both these petitions arise out of the orders passed in two separate suits, they are in between the same parties and in respect of the same subject matter. As such, both these petitions are being disposed of by this common order.

2. The petitioners, Ramesh Gupta and Raghuraj Shekhawat are the plaintiffs in Regular Civil Suit No. 82/2015/B [Special Civil Suit No. 112/2004/B (old)]. The petitioners respectively, are the defendant nos. 4 and 3 in Regular Civil Suit No. 91/2015/B [Special Civil Suit No. 95/2007/B(old)], filed by the respondent no. 1, Chandralekha Karanjia. Both the suits are pending before the learned Senior Civil Judge at Panaji.

3. The petitioners had initially filed an application for leading secondary evidence in Regular Civil Suit No. 82/2015/B. The petitioners had sought permission to lead secondary evidence in respect of the following documents:

1. Form 'B' of Declaration under Voluntary Disclosure Scheme and attachment order.
2. Affidavit dated 17.09.1983 of defendant no. 1 and declaration dated 24.10.1983 of defendant no. 1.
3. Agreement of sale dated 16.02.1984.
4. NOC dated 24.12.1983 from Panaji and Development Authority.
5. Power of Attorney and Declaration dated 01.03.1984.
6. Deed of Release/Disclaimer/Declaration and the receipt form T dated 30.03.1984.
7. Affidavit dated 12.05.1984.

4. That application was dismissed by the learned Trial Court by an order dated 25.11.2010. The petitioners filed yet another application (Exhibit-141) for production of secondary evidence in respect of the following four documents:

1. Affidavit dated 17.09.1983 of defendant no. 1 and declaration dated 24.10.1983 of defendant no. 1.
2. Agreement of sale dated 16.02.1984 executed between Chandralekha Karanjia and Mr. Flaviana Monteiro.
3. NOC from Panaji North Goa Planning and Development Authority (NGPDA) dated 24.12.1983.
4. Affidavit dated 12.05.1984 executed by Chandralekha Karanjia

5. The said application has been dismissed by the learned Trial Court by an order dated 07.09.2017, which is subject matter of challenge in Writ Petition No. 953/2017.

6. A similar application came to be filed in Regular Civil Suit No. 91/2015/B at Exhibit-77, which was dismissed by an order of the even date i.e. 07.09.2017, which is subject matter of challenge in Writ Petition No. 951/2017.

7. One of the reasons for which the applications have been rejected is that there was a previous application filed for similar reliefs, which was rejected on 25.11.2010. It is however significant to note that there was no such previous application filed in Regular Civil Suit No. 91/2015/B. For this reason alone, the reasoning articulated by the Trial Court, while dismissing the application Exhibit-77, on the ground of a similar previous application being rejected, is not correct.

8. At this stage, the learned Counsel for the petitioners, on instructions, submits that he is not pressing for the permission to lead secondary evidence in respect of the declaration dated 24.10.1983. In other words, insofar as the document at serial no. 1 is concerned, the only permission

sought is in respect of the affidavit of defendant no. 1, Chandralekha Karanjia dated 17.09.1983.

9. On hearing the learned Counsel for the parties, it appears that the respondent no. 1/defendant no. 1 is not disputing the execution of the agreement of sale dated 16.02.1984 and the NOC obtained from the NGPDA on 24.12.1983. Thus, there should be no difficulty in granting permission to lead secondary evidence in respect of these two documents, as their execution as well as the contents thereof are not disputed by the contesting defendant no. 1. Insofar as the affidavit dated 17.09.1983 and the affidavit dated 12.05.1984 are concerned, the defendant no. 1 is not disputing the signature and the execution of these affidavits. The only contention is that these affidavits were got executed by the original plaintiff, Jahangir Karanjia, under undue influence on her, in order to give up her ownership rights.

10. On a bare perusal of the relevant issues, it appears that the burden to prove this aspect as to whether, the original plaintiff, Jahangir Karanjia had used undue influence on the defendant no. 1, is on the defendant no. 1, Chandralekha Karanjia. Thus, subject to the contention, as raised on behalf of

the defendant no. 1 being left open, permission to lead secondary evidence in respect of the affidavit dated 17.09.1983 and the affidavit dated 12.05.1984, can also be granted.

11. Shri Agni, the learned Counsel for the respondent no. 1, in all fairness, has no objection for such a course being followed.

12. In such circumstances, both the petitions are disposed of, by consent of parties, in the following terms:

- (a) The impugned order dismissing the application Exhibit-141 in Regular Civil Suit No. 82/2015/B [Special Civil Suit No. 112/2004/B (old)] and the order below Exhibit-77 in Regular Civil Suit No. 91/2015/B [Special Civil Suit No. 95/2007/B (old)], are hereby set aside.
- (b) Permission is granted to the petitioners to lead secondary evidence in respect of the following documents:
 - (i) The affidavit dated 17.09.1983.
 - (ii) The agreement of sale dated 16.02.1984.
 - (iii) NOC from NGPDA dated 24.12.1983 and
 - (iv) The affidavit dated 12.05.1984.
- (c) This shall be subject to the contention of the respondent no. 1/defendant no. 1 being kept open that the affidavits dated 17.09.1983 and 12.05.1984, were got executed from her under undue influence by the original plaintiff, Jahangir Karanjia.

- (d) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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