

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 42 OF 2012**

Smt. Laxmi Naik
Through Power of Attorney
Shri Pramod Naik
Son of late Baban Naik,
Aged 36 years,
R/o. H. NO.43, Tarvalem,
Shiroda, Ponda-Goa.

... Petitioner

V e r s u s

1. Smt. Shalini Pilgaonkar, widow,
major of age,
2. Shri Chandrakant Pilgaonkar (since deceased
through Lrs.)
- 2 (a) Santosh C. Pilgaonkar, married, major of age
- 2 (b) Surekha Pilgaonkar, married, major of age
- 2 (c) Sanju Pilgaonkar, married, major of age
- 2 (d) Namita Pilgaonkar, married, major of age
- 2 (e) Sandeep Pilgaonkar, married, major of age
- 2 (f) Sampada Pilgaonkar, married, major of age

All residents of Mangueshi, Ponda- Goa.

- 2 (g) Anita S. Naik, married, major of age
- 2 (h) Shivanand Anant Naik, married, major of age

Both r/o opposite Mahalsa Urban Co-operative
Credit Society, Mardol, Goa.

- 2 (i) Sarita K. Naik, married, major of age
- 2 (j) Kailas Datta Naik, married, major of age
Both r/o Simepaine Mangueshi,
Goa, Post- Mardol.
- 2 (k) Sunita S. More, married, major of age
- 2 (i) Santosh More, married, major of age

Both r/o Savergalivazem,
Satiyamal, Near Murphy factory
Shiroda Goa.
3. Mr. Ramdas Raghuvir Shet Lotlikar,
married, major of age.
4. Mrs. Roshan Ramdas Shet Lotlikar,
married, major of age

Both R/o Tarvallem, Shiroda-Goa.
5. Mr. Santosh Vaikunth Naik,
major of age,
R/o Haldai, Shiroda-Goa.
6. Mr. Ramesh Nanda Shirodkar,
major of age,
R/o Carai, Ponda-Goa.
7. Mrs. Ramabai Balkrishna Shirodkar,
married, major of age
R/o H. No.154/1 Mungul Margao,
Salcete-Goa.
8. Ramesh Sukdo Naik,
R/o Carai Shiroda-Goa.
9. Damodar Khushali, major of age
Resident of H. No.315, Vazem,
Shiroda Goa.

..... Respondents

(The above are registered addresses of the parties)

Shri Gaurish Agni, Advocate for the Petitioner.

Shri A. D. Bhobe, Advocate for the Respondents nos. 3 to 6, 8 and 9.

CORAM: C. V. BHADANG, J.

DATE: 29th January, 2018.

ORAL JUDGMENT :

The challenge in this petition is to the concurrent finding of refusal of temporary injunction to the petitioner/plaintiff by the Courts below. The petitioner filed R.C.S. No.11/2010/A against the respondents for declaration, permanent injunction and recovery of damages on the premise that there is surreptitious inclusion of certain recitals in the Power of Attorney dated 2/5/2007 executed by the petitioners in favour of his sister-in-law i.e. respondent no.1, Shalini Pilgaonkar stating that the consent terms dated 11/12/2002 executed in R.C.S. No.108/2001 have erroneously granted a joint share to the petitioner in plot (B) admeasuring 3000 sq.mtrs.. It was contended that if according to the respondent no.1, the party never intended to allot any share to the petitioner in plot (B) as mentioned in para 3 of the consent terms, there was no occasion for the respondent no.1 to have obtained the Power of Attorney from the petitioner. It was also contended that the sale deeds executed in favour of respondent no.3 to 9 also make a

mention that the petitioner was a co owner.

2. In the suit, the petitioner sought temporary injunction restraining the respondents or anybody on their behalf from carrying out any construction in the suit property and/or alienating or creating third party rights in the same or otherwise interfering in the suit property in any manner whatsoever. The learned trial court, by the impugned order dated 11/1/2011 dismissed the application for temporary injunction, which has been confirmed in appeal. Hence this petition.

3. I have heard Shri Agni, the learned counsel for the petitioner and Shri Bhobe, the learned counsel for the respondent nos.3 to 6, 8 and 9. Perused record.

4. Shri Agni, the learned counsel for the petitioner pointed out that the appellate court held that prima facie case for grant of relief is in favour of the petitioner. It is submitted that both the Courts below refused to grant temporary injunction on the ground that there would be no irreparable loss caused to the petitioner in as much as the petitioner has also claimed compensation/damages which according to the Courts below would adequately take care of any loss that may be caused to the petitioner. The

learned counsel submitted that the Courts below have relied upon the decision of the Supreme Court in the case of **Dalpat Kumar and anr. Vs. Prahlad Singh and others** AIR 1993 SC 276. He however points out that in a subsequent decision in the case of **Maharwal Kherwaji Trust (Regd.) Faridkot Vs. Baldev Dass 2004 (8) SC 199**, the Supreme Court has held that unless and until a case of irreparable loss or damages is made out, the Court should not permit the nature of the property to be changed which also includes alienation or transfer of the property. He, therefore, submits that the Courts below were in error in refusing temporary injunction.

5. Shri Bhobe, the learned counsel for the respondents has supported the impugned order. It is submitted that the Power of Attorney is executed in May 2007 while the suit was filed in the year 2010. He submitted that the Courts below have rightly come to the conclusion that in the wake of a relief of compensation/damages claimed, the petitioner had failed to demonstrate irreparable loss which is one of the requirements to be satisfied for grant of temporary injunction. The learned counsel further points out that the trial has commenced in the suit and for the last 7 to 8 years there is no order of injunction operating in favour of the petitioner. He points out that the respondents are bonafide purchasers of the plot and they cannot be enjoined as prayed.

6. I have carefully considered the rival circumstances and the submissions made. The entire case of the petitioner is based on the claim that there were certain averments incorporated in the Power of Attorney saying that in the consent terms the petitioner was erroneously shown as one of the allottees amongst others. In this regard it is significant to note that the power of attorney is executed in May 2007, while the suit came to be filed in the year 2010. The trial court found that the petitioner has not established prima facie case. A perusal of the judgment of the appellate court would show that there are certain observations made at the end of para 13 in which the appellate court has found that “at the highest it can be said that the plaintiff has a prima facie case taking into consideration the fact that the petitioner is illiterate.” I do not find that the observations so made can be accepted. It is pertinent to note that the respondent no.3 to 9 are purchasers under a registered sale deed. The petitioner in the suit has inter alia claimed for recovery of money and damages. Apart from existence of a prima facie case, a party has also to demonstrate that it would suffer irreparable loss in the event the injunction is not granted. Irreparable loss is one which cannot be assessed or compensated in terms of money. It is only when the party demonstrates that it would suffer irreparable loss in the event the injunction is not granted that it can be said that the balance of convenience lies in favour

of the party. It is trite that for grant of order of injunction a party has to demonstrate existence of all the three requirements. In the present case the Courts below, based on the judgment of the Supreme Court, in the case of **Dalpat Kumar (supra)** have held that in view of the claim for compensation/damages the petitioner is not entitled to grant of injunction.

7. In the case of **Maharwal Khewaji Trust (supra)** the trial court had granted injunction which was set aside in appeal by the District Court. The High Court permitted the respondents to carry out the construction subject to an undertaking. A perusal of the judgment of the Hon'ble Supreme Court makes it clear that in the facts and circumstances of the said case, it was found that the High Court was not justified in permitting the respondent to change the nature of the property by putting construction as also by permitting the alienation of the property. Thus in my considered view the case of **Maharwal Khewaji Trust** turned on its own facts.

8. In the present case, admittedly plot (B) which is the subject matter of dispute is admeasuring 3000 sq.mtrs., in which there were three allottees including the petitioner. It was contended by the learned counsel for the petitioner that the petitioner was the owner of one third undivided share which would be 1000 sq.mts. In any event, assuming that the Power of

Attorney was not valid it can only affect 1000 sq.mts. of land out of the plot (B) and it will not affect the rest 2000 sq.mtrs. As noticed earlier, the Power of Attorney is of May 2007. The petitioner filed the suit in the year 2010 challenging the Power of Attorney executed in May 2007. For more than 7 years the petitioner is without any interim relief. The trial has commenced in the suit. In the overall circumstances, I do not find that interference is called for in the impugned orders. In the result, the petition is dismissed with no order as to costs. The trial court shall decide the suit as expeditiously as possible and preferably within a period of one year from the receipt thereof.

C. V. BHADANG, J.

Ap/