

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 10 of 2019

- 1 Smt. Ratnem Vishnu Kamat @
Rukmabai Vishnu Kamat D/o. Late
Anant Rataboli
Aged 83 years.
- 2 Mr. Vishnu Manjunath Kamat,
S/o. Manjunath Kamat,
Aged 83 years,
Both r/o. H. No. 83, Harita,
Post: Kodambale, Tq- Kumta,
North Kanara District. Appellants

Vesus

- 1 Smt. Roopali Sunil Lotlikar,
Aged 37 years,
- 2 Shri Sunil Kashinath Lotlikar,
S/o. Kashinath Lotlikar,
Major in age,
- 3 Shri Arvind Kashinath Lotlikar,
S/o. Kashinath Lotlikar,
Aged 53 years, Occ: Business.
- 4 Smt. Arvind Lotlikar,
W/o. Arvind Kashinath Lotlikar,
major in age,

All R/o. Shankar Nivas,
near Karapurkar Residency,
Porvorim, Bardez, Goa.
- 5 Shri Ramachandra Anant Sinai
Rataboli,
S/o. Lt. Anant N.S. Rataboli,
Aged 76 years,
- 6 Smt. Sitabai Ramachandra Sinai
Rataboli,
Aged 69 years,

Both R/o. H.No.2, Virlossa Wado,
Britona, Bardez, Goa.

7 Smt. Manica Sinai Rataboli @ Manik
Venkatesh Nayak,
D/o. Late Anant N.S. Rataboli,
Aged 72 years

8 Shri Venkatesh Ramakrishna Naik,
S/o. Ramakrishna Naik,
Aged 73 years,

Both R/o. H. No. C/002,
Shree Sayi Shilpa CHS Ltd.
Gavanpada, Mulund (East)
Mumbai 81.

..... Respondents

Shri V. Menezes, Advocate for the appellants.

Shri S. D. Lotlikar, Senior Advocate with Ms. S. Keny, Advocate
for the respondents No.1 to 4.

Shri A.D. Bhobe, Advocate for the respondents No. 5 and 6.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 26th April,2019.

Pronounced on: 03rd May,2019.

JUDGMENT:

Heard Shri V. Menezes, learned Advocate for the
appellants, Shri S. D. Lotlikar, learned Senior Advocate for the
respondents No.1 to 4 and Shri A.D. Bhobe, learned Advocate
for the respondents No. 5 and 6.

2. Admit.

3. Ms. S. Keny, learned Advocate waives service on behalf of the respondents No.1 to 4 and Shri A.D. Bhobe, learned Advocate waives service on behalf the respondents No. 5 and 6.

4. The appellants are challenging the order dated 21/09/2018 passed by the Senior Civil Judge, Mapusa rejecting the application for temporary injunction filed by them.

5. Heard Shri V. Menezes, learned Advocate for the appellants who submitted that the property claimed by the appellants was that admeasuring an area of 7500 sq.mts., described in the Land Registration Office under No.4215 and surveyed under Survey No.192/1B of Village Penha De France. He referred to the survey plan forming a part of the records showing the property in question bearing Survey No.192/1B and submitted that the Sale Deeds dated 13/06/2011 executed by the defendants No.5 and 6 pursuant to the Power of Attorney executed in their favour was without any basis. He adverted to the Sale Deeds to show how there was an interpolation/

correction made in the Sale Deeds showing the property as surveyed under Survey No.192/1 part by deleting B. He referred to the Power of Attorney executed in favour of the respondents No.5 and 6 apart from the schedule to the Sale Deeds clearly showing the southern boundary as the property bearing Survey No. 192/1. He also referred to another plan forming a part of the Sale Deeds and showing Survey No.192/1B being divided into two plots. Last but not the least he referred to the impugned order and submitted that there was clearly an error by the learned Trial Court in passing the order as it did without securing the appellants by an order of injunction and therefore it was a fit case to quash and set aside the order and secure the appellants with the order of injunction.

6. Shri S.D. Lotlikar, learned Senior Advocate for the respondents No.1 to 4 submitted that the case of the appellants was that the property in dispute was that bearing Survey No. 192/1B. It was clearly a case whereby the appellants had executed a Power of Attorney in favour of the respondents No.5 and 6 to sell the property bearing Survey No.192/1. The correction was made in the Sale Deeds at the time of execution

of the Sale Deeds as early as 2011. He next referred to the general Power of Attorney executed by the appellants in favour of the respondents No.5 and 6 in which there was a clear assertion by the appellants that they had inherited proprietary rights in the property bearing survey Nos.92/1 and 192/3 together admeasuring 3125 sq.mts and that they were executing the Power of Attorney in favour of the respondents No.4 and 5 to act at their behest. It was incumbent on the appellants to establish the existence of the property as 192/1A, 192/1B and 192/1C. The Sale Deed of 2011 in their favour was duly registered. He next referred to the plaint in which the appellants had claimed that the cause of action had arisen in June, 2012 while the suit was filed only later i.e. in 2015. No relief too had been sought for three years till 2015 by the appellants. Besides, the revocation of the Power of Attorney after the execution of the Sale Deed and its registration was improper. The case of the appellants was doubtful and therefore in the absence of any case made out by them in their favour, they could not be secured with the order of injunction.

7. Shri A.D. Bhole, learned Advocate for the respondents No.

5 and 6 submitted at the outset that the Power of Attorney was executed on 25/10/2001 while the Sale Deeds came to be executed in favour of the respondents No.1 to 4 only in June, 2011 while the revocation of the Power of Attorney was done almost a year thereafter in June, 2012. He also adverted to the affidavit filed on record and submitted that there was no basis in the case of the appellants and therefore the appeal had to be dismissed.

8. i would consider their submissions, the records of the file and in the light thereof decide the appeal accordingly.

9. The appellants had come up with the case that the property at Britona admeasuring 7500 sq.mts. described in the Land Registration Office under No.4215 and surveyed under Survey No.192/1B of Village Penha De France was the item No.11 which was allotted to the mother of the appellant No.1 in the inventory proceedings alongwith another property being item No.10 and $\frac{1}{3}^{\text{rd}}$ of item No.2 while her brother who was the respondent No.5 was allotted the share of the property being $\frac{1}{3}^{\text{rd}}$ of the item No.2, entire item No.4 and item Nos.5 and 6 of

the inventory proceedings. It was therefore her case that he had no right title and interest in the item No.11 being the subject matter of the suit despite which he had sold the suit property in favour of the respondents No.1 to 4 by the registered Sale Deeds both dated 13/06/2011.

10. It was the case of the appellants as the original plaintiffs that no inventory proceedings were initiated upon the death of her mother nor was there any judicial partition of her assets and the property bearing Survey No.192/1B which is the subject matter of the Sale Deeds was the ancestral property in which she had right, title and interest to the extent of 1/3rd share by inheritance which she had neither relinquished nor released nor surrendered in favour of the other co-owners. On this premise, she claimed the relief of injunction in 2015 on a cause of action arisen to her in June 2012 upon the receipt of the mutation notices from the office of the Mamlatdar of Bardez at Mapusa and on learning that the respondents No.1 to 4 were trying to sell the suit property to a 3rd person. There was otherwise an admission at their instance that a general Power of Attorney was executed by the appellants/ plaintiffs on 25/10/2001 in favour of

the respondent No.5 and pursuant to which he had sold the property to the respondents No.1 to 4.

11. The respondents No.1 to 4 had clearly refuted the appellants' claim that the respondent No.5 had no right, title or interest in the item No.11 i.e. the suit property and that the suit property was sold by the appellants alongwith the respondents No.5 and 6 by valid and effective Sale Deeds dated 13/06/2011. They categorically denied the appellants' case that the first appellant had not executed the general Power of Attorney in favour of the respondent No.5 concerning the property bearing Survey No.192/1B of that he had no right or authority to sell the property in question to any 3rd party at her instance. The appellants had sold and conveyed their share in the suit property to the respondents No.1 to 4 and therefore no question arose of the appellants not having relinquished their share in the entire undivided family property. On account of the execution of the Sale Deeds, the appellants' title stood extinguished and passed in their favour.

12. The respondents No.1 to 4 acting on the basis of the Sale

Deeds had initiated the mutation proceedings of which notice was given to the appellants. The appellants were not entitled to any relief much less the equitable relief of injunction and therefore the appeal was liable for dismissal. The respondents No.5 and 6 had taken a plea that the proceedings itself were barred by limitation and liable for dismissal on that ground alone. The appellants had duly signed and executed the Sale Deeds dated 13/06/2011 through their duly constituted attorney being the co-owners of the suit property and denying the plea that it was a general conditional Power of Attorney. They too pressed for the dismissal of the appeal as there was no force in their case for the grant of injunction in their favour which was rightly denied to them by the Trial Court.

13. What all the appellants had relied upon were the survey plan showing the property bearing Survey No.192/1B and the general Power of Attorney executed in favour of the respondent No.5. Pursuant to the said Power of Attorney, the respondent No.5 was authorised to sale, mortgage, exchange, hypothecate, charge, convey, transfer or discharge or dispose off by private arrangements or otherwise the said plot as they think fit and to

draw up Agreement for Sale and Deed of Sale before the competent authority amongst others. This Power of Attorney was executed in favour of the respondent No.5 as early as 25/10/2001 while the Sale Deeds were executed on 13/06/2011 and the Power of Attorney was revoked almost a year later on 05/06/2012. They sought the relief of declaring the Sale Deeds dated 13/06/2011 as null and void in 2015 which suit was apparently barred by limitation.

14. That apart the Sale Deeds dated 13/06/2011 were executed by the respondents No.5 and 6 apart from the appellants themselves being represented through their constituted attorney i.e. the respondent No.5 and who had effected the sale of the property bearing Survey No.192/1B in their favour and better described in the schedule to the Sale Deeds as being surveyed under No.192/1 Part. The southern boundary of the property being that surveyed under No.192/1 does not in any manner substantiate the case of Shri V. Menezes, learned Advocate for the appellants that Survey No.192/1B was a part of Survey No.192/1. No documents too were produced on record to that effect to reconcile that Survey

No.192/1B was a part of the Survey No.192/1. The survey plan to which attention was invited also did not show that the southern boundary of Survey No.192/1B was a part of the Survey No.192/1. Furthermore the affidavit of the appellant No.1 to which attention was invited by Shri Bhobe, learned Advocate for the respondents No.5 and 6 clearly indicates that after the execution of the Power of Attorney, the Deputy Collector had partitioned the property surveyed under Survey No.192/1 from the rest of the property and granted it a separate Survey No.192/1B of Village Penha De France.

15. The assertion by the appellants No.1 and 2 in their affidavit further reinforces the case of the respondents No.1 to 6 in particular that the respondents No.5 and 6 acting on the basis of the Power of Attorney dated 25/10/2001 had incorporated the Survey No.192/1B in place of the Survey No.192/1 in all the documents such as the Sale Deeds, ratification deed and mortgage deed. This affidavit clinches the case against the appellants which was affirmed by them on 02/08/2011 and consequent upon the execution of the Sale Deed dated 13/06/2011. Moreover, the Sale Deeds of 13/06/2011 were duly

registered unlike the case of the appellants. The case filed by the appellants was also fraught with delay and laches inasmuch as no relief was sought for three years even though as per their own version the cause of action had arisen in June, 2012.

16. The learned Trial Court had considered the material at large before her namely the general Power of Attorney executed by the appellants in favour of the respondent No.5 and acting on the basis of the said Power of Attorney, the respondent No.5 had sold the property bearing No.192/1B to the respondents No.1 to 4. The learned Judge had taken due notice of the contention on behalf of the appellants that they had revoked the general Power of Attorney dated 25/10/2001 by a public notice dated 05/06/2012 but that the sale deeds executed by the respondent No.5 were much prior to the revocation of the power of attorney thereby establishing that he did have the power to execute the Sale Deeds. The learned Judge thus rightly found that the appellants had failed to make out a prima facie case to grant the injunction in their favour. The learned Judge for that matter also noticed though in a cryptic manner that the balance of convenience was tilted in favour of the respondents and that it

was the respondents who would suffer irreparable loss and injury and not the appellants and on that premise had rightly withheld the relief of injunction. No case whatsoever has been made out for the reversal of the order passed by the learned Trial Court.

17. In the result, therefore, i did not find any merit in the appeal which is hereby dismissed with no order as to costs.

NUTAN D. SARDESSAI, J.

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