

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 575 OF 2018**

SURESH B. SALUNKE & 2 ORS. ... PETITIONERS
Versus
SHIVANAND B. SALUNKE & ANR. ... RESPONDENTS

Mr. Ashwin D. Bhobe, Advocate for the Petitioners.

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

CORAM : C.V. BHADANG, J.

Date : 4th February, 2019

ORAL ORDER:

By this petition, the petitioners, who are the original defendants, are challenging the grant of temporary injunction to the respondents-plaintiffs, by which, the petitioners or anybody on their behalf have been restrained from alienating the suit property or doing any further work in the suit property.

2. The respondents filed Regular Civil Suit No. 129/2013, against the petitioners for declaration and permanent injunction. The petitioner no. 1 and the respondent no. 1 are real brothers. Property better known as 'Cumbiachem Penem', surveyed under nos. 16/1, 17/1, 18/1 and 19/3 of village Velus, within the jurisdiction of Valpoi Municipal Council, is the subject matter of dispute and is referred to as the suit property. It is a matter of

record that the name of the respondent no. 1 is recorded in the occupants column in survey nos. 16/1, 17/1 and 18/1, while the name of his father Balkrishna Salunke is recorded in the occupants column of survey no. 19/3. It is contended that Balkrishna Salunke had admitted that he had no right to survey no. 19/3 in a deed of declaration, dated 04.10.1985 registered before the Sub-Registrar of Sattari.

3. Be that as it may, the case made out in the plaint is that the suit property belonged to the Government, which was granted as lease to late Shridhar Joshi on 24.08.1908 during Portuguese regime, under decree no. 3602. On the death of Shridhar Joshi, the lease came to his son, Vinayak Joshi vide order no. 842 dated 02.07.1910 by the then Governor General of Portuguese India. The suit property is a major part of the original grant. On 02.03.1973, Vinayak Joshi entered into partnership with Balkrishna Salunke and later on the respondent no. 1 joined as a partner in place of his father. The entire capital was invested by the respondent no. 1.

4. On 05.10.1973, Vinayak Joshi executed an agreement for sale with the respondent no. 1, who paid Rs.15,000/- as earnest money. The sale deed was to be executed on obtaining

definitive grant from the Government by Vinayak Joshi. Vinayak Joshi executed special power of attorney dated 03.10.1973 in favour of the respondent no. 1.

5. Subsequently, the plaintiffs and the defendants by a deed of declaration dated 04.10.1985 registered before the Sub-Registrar of Sattari, agreed that on their death, their heirs shall inherit the rights to the suit property. As per clause 7 of the deed of declaration, it was agreed that every instrument in respect of the suit property was to be drawn and executed by the plaintiffs (the parties of the first part) and the defendants (the parties of the second part). It was also contended that the respondents/plaintiffs are in cultivatory possession of the suit property since 1973.

6. The suit came to be filed, as according to the plaintiff no. 1, Sujit Salunke (defendant no. 3) commenced laying of plots in survey no. 19/3 and selling the same. On inquiry, the plaintiffs came to know of a deed of gift dated 21.07.2009, by which, Sujit Salunke had gifted plot no. 12 to one Ashish Kanekar. It was also revealed that Sujit Saluke had made 13 plots in survey no. 18/2 and sold to various persons in the form of gift deeds, although, it was a Government land. In such circumstances, the suit was

filed for rescission of the deed of declaration dated 04.10.1985 or for a declaration that it be declared as null or void and for permanent injunction, restraining the petitioners or anybody on their behalf from doing any further construction work or taking up non-agricultural activities or interfering with the possession of the suit property.

7. The learned Trial Court found that the land belonged to the Government and the application for injunction has to be decided on the basis of possession. The learned Trial Court noted that the revenue record in respect of survey nos. 16/1, 17/1 and 18/1 is in the name of the respondent no. 1, while in respect of survey no. 19/3, the name of Balkrishna Saluke is shown in the occupants column and there is presumption flowing from the said entries. The learned Trial Court noted that the deed of declaration of 1985 did not enclose any sketch, so as to show the exclusive possession of the plaintiffs and at the highest, the parties were in joint possession and not exclusive possession, as claimed by the plaintiffs. It was in these circumstances that the Trial Court granted injunction as aforesaid.

8. Feeling aggrieved, the petitioners challenged the same before the learned District Judge in Miscellaneous Civil

Appeal No. 3/2017. The learned District Judge concurred with the finding recorded by the learned Trial Court and has dismissed the appeal on 09.01.2018. Hence, this petition.

9. I have heard Mr. Bhobe, the learned Counsel for the petitioners and Mr. Ramani, the learned Counsel for the respondents.

10. At the outset, it is necessary to note that on 05.06.2018, the learned Counsel for the petitioners had restricted the challenge to the later part of the order, whereby the petitioners have been restrained from doing any further work in the property. In other words, the petitioners are not challenging the part of the order restraining the petitioners from alienating or creating third party rights in the suit property.

11. The challenge on behalf of the petitioners is based on the deed of declaration dated 04.10.1985. Both the Courts have concurrently found that the petitioners have failed to show any exclusive possession of any part of the suit property. Thus, the reliance placed on the deed of declaration, to my mind, is misplaced. *Prima facie*, at this stage, there is documentary evidence to show that the lease was granted by way of "alvara",

to Shridhar Joshi and thereafter, devolved on his son Vinayak Joshi and there is agreement for sale dated 05.10.1973 alongwith special power of attorney executed by Vinayak Joshi in favour of the respondent no. 1. The revenue record in respect of three survey numbers, out of four, is in the name of the respondent no. 1 and the fourth one stands in the name of Balkrishna Salunke, father of the petitioner no. 1 and respondent no. 1. In the absence of any exclusive right/possession, the petitioners, to my mind, cannot take exception to the part of the impugned order, restraining them from doing any further work in the suit property. Even assuming for a moment that the parties are in joint possession, still the petitioners cannot carry out any work in the suit property to the exclusion of others.

12. I have carefully gone through the impugned order passed by the learned Trial Court and that of the learned District Judge and I do not find that they suffer from any infirmity, so as to require interference. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

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