

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 28 OF 2018

**SHAILESH NARAYAN VERNEKAR AND
ANR.,**

... Applicants

Versus

**RAGHUVIR SHESHAGIRI VERNEKAR AND 3
ORS.,**

... Respondents

Mr. Pravin Faldessai, Advocate for the Applicants.

Mr. C.A. Coutinho, Advocate for Respondent Nos. 1 and 3.

Coram:- C. V. BHADANG, J.

Date:- 25th July, 2019

ORAL ORDER:

The challenge in this Revision Application is to the order dated 05.05.2018, passed by the learned Civil Judge Junior Division at Canacona in Regular Civil Suit No. 21/2017. By the impugned order, the application filed by the applicants (defendant nos. 1 and 2), for rejection of the plaint under Order VII, Rule 11(a) and (d) of CPC, has been dismissed.

2. The respondent nos. 1 and 2 have filed the aforesaid suit, against the applicants and two others, for a declaration that the deed of gift dated 28.07.2006 is obtained by the defendant no. 1 by playing fraud on the plaintiffs and for other consequential reliefs.

3. The applicants filed an application for rejection of the plaint on the ground that the plaint does not disclose cause of action and it is barred by res judicata as there was a previous suit seeking similar reliefs, in which, the plaint was rejected.

4. The learned Trial Court has refused to accept the contention of the applicants on either count and to my mind rightly so. The plaint discloses that the cause of action for filing the suit arose on 22.03.2014. At this stage, it is not necessary to go into the question whether, the plaintiffs would be able to substantiate their case and get any relief as prayed for. Even insofar as res judicata is concerned, the learned Trial Court has observed in para 17 of the impugned order that it is a part of the defence by the applicants, which cannot be looked into, at this stage, when the rejection of the plaint is sought for. The learned Trial Court has observed that the applicants have an option for requesting the said issue to be taken up as a preliminary issue or at the time of the final hearing of the suit. The finding so recorded does not exhibit any jurisdictional error, so as to warrant interference.

5. The Revision Application is dismissed, with no order as to costs. Needless to mention that this Court has not expressed any opinion on the issue of res judicata, which may be raised by the

applicants.

C. V. BHADANG, J.

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