

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 950 OF 2018

MARIA FERNANDES AND 3 ORS., ... Petitioners

Versus

MANIK VINAYAK PRABHU GAONKAR AND
15 ORS., ... Respondents

Mr. Ravi Gawas, Advocate for the Petitioners.
Mr. C. A. Coutinho, Advocate for the Respondent nos.11 and 12.

Coram:- C. V. BHADANG, J.

Date:- 26th February 2019

P.C.

By this petition, the petitioners/plaintiffs are challenging the order dated 03.09.2018 passed by the learned Trial Court below exhibit 29, thereby granting permission to the respondent no.11(defendant no.11) to re-plant the coconut saplings in the suit property as presently they are clustered together which is not conducive to their proper growth.

2. The petitioners are claiming the suit property on the basis of an Aforemento granted to their ancestors some 90 years back. There is an ad-interim order of temporary injunction operating against respondent nos.11, 12, 13 and 14 by which they have been restrained from carrying out demolition of any structures in the area falling in the suit plot A, C and C-1 of survey no.123/2

of Village Agonda, without following due process of law.

3. A perusal of the order shows that the Trial Court has, prima facie, come to the conclusion that the respondent nos.11 and 12 (defendant no.11 and 12) have a better title to the suit property than the petitioners. However, the ad-interim injunction has been granted only to protect the structures, existing in the suit property.

4. Be that as it may, all that the Trial Court has done by the impugned order is to grant permission to the respondent no.11 to replant the coconut trees as presently they are said to be clustered together. I do not find that the impugned order results into any manifest injustice to the petitioner inasmuch as the Trial Court has made it clear that on the strength of the said order the respondent no.11 shall not claim ownership over the saplings and the ownership shall be decided at the trial. It is obvious that the impugned order cannot create any equity in favour of the respondent nos.11 to 14 as it is only an interim measure to protect the coconut saplings and to ensure their proper growth.

5. Mr. C. A. Coutinho, the learned Counsel for the respondent nos.11 and 12 submits that the respondent nos.11 and 12 shall file a joint undertaking before the Trial Court that they will personally be responsible for proper re-plantation of the trees and

eventually if any damage is caused to the saplings they will be personally responsible for the same. The statement is accepted.

6. Subject to this, no case for interference is made out, the petition is dismissed subject to the respondent nos.11 and 12 filing the undertaking as aforesaid before the Trial Court within two weeks from today.

7. Needless to mention that this order shall not create any equity or right in favour of the respondent nos.11 to 14. The learned Counsel for the respondent nos.11 and 12 submits that the respondents will give a prior notice to the petitioners about the re-plantation and the petitioners can remain present if so advised.

8. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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