

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 36 OF 2015

WITH

CIVIL APPLICATION NO. 136 OF 2015

WITH

MISCELLANEOUS CIVIL APPLICATION NO.542 OF 2016

WITH

APPEAL FROM ORDER NO. 37 OF 2015

WITH

CIVIL APPLICATION NO. 138 OF 2015

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 543 OF 2016

Shri Oswald Silvestre Girvasio Colaco,
major, Mechanical Engineer, resident of
House No.E/66, Dr. Dada Vaidya Road,
Panaji-Goa.

...Appellant.

Versus

Mr. Philip Dias (since deceased) through
his legal representatives: Mr. Manso Dias
(since deceased), through legal
representatives and others.

.... Respondents.

Mr. Rohit Bras De Sa with Mr. V. Shet, Advocates for the Appellants.

Mr. J. P. Mulgaonkar, Senior Advocate with Mr. J.J. Mulgaonkar,
Advocate for the Respondents No. 2A to 2F and Respondent No.3 in
AO No. 36/2015 and for Respondents No. 2G to 2L and
Respondent No. 4 in AO No. 37 of 2015.

Mr. Anthony X. N. Rebello, Advocate for Respondents No.1B,
1C(I), 1C(II), 1C(III) and 1C(IV) in AO No. 36 of 2015 and for
Respondents No.1(C-III, IV) and 1(D) in AO No. 37 of 2015.

Coram : M. S. SONAK, J.

Date : 25th September, 2020

ORAL JUDGMENT:

Heard Mr. Rohit Bras De Sa alongwith Mr. V. Shet, learned Counsel for the appellants in both these appeals. Mr. J. P. Mulgaonkar, learned Senior Advocate appears with Mr. J. J. Mulgaonkar, for some of the respondents in both these appeals. Mr. Anthony Rebello, learned Counsel also appears for some of the respondents in these appeals. However, he is not present today.

2. The challenge in both these appeals is to the impugned orders made by the learned trial court declining interim reliefs to the appellants/plaintiffs. One of the reasons for denial of interim reliefs was because the learned trial court felt that the construction was substantially complete and even some transactions for transfer entered into, before filing the application for interim relief. Mr. Rohit Bras De Sa contests this position.

3. However, the fact remains that from the date of the institution of the suits till today, there is no interim relief in operation in favour of the appellants/plaintiffs. At this point of time, it will, therefore, be difficult to grant any interim reliefs in favour of the appellants. At the highest, the trial in the 2 suits can be

expedited. Further, it can also be made clear that the suits will have to be disposed of on their own merits without being influenced by any observations in the impugned orders or the fact that no interim orders are being granted by this Court at this stage. It is ordered accordingly.

4. Mr. Rohit Bras De Sa points out that both the suits, have, in fact, been dismissed for non-prosecution. Technically therefore, these appeals, have become infructuous. However, Mr. Rohit Bras De Sa, points out that on the very next date from the dismissal of these suits for non-prosecution, restoration has been applied for. The reason given in such application is that there was some bonafide mistake in noting the correct date.

5. Since, applications for restoration were made on the very next day, I am quite sure that the learned trial judge will consider the cause shown and on hearing the parties, most probably, restore the suits. Therefore, rather than disposing of these appeals on the ground that they are infructuous and, thereafter, grant the appellants further liberty to seek restoration of these appeals from order, these appeals are disposed of with the aforesaid observations.

6. Mr. Mulgaonkar, learned Senior Counsel for some of the respondents points out that he has not been able to contact the

respondents for whom he appears. However, he submits that normally there should be no difficulty in such respondents giving their no objection for restoration of the suits on the ground now urged by Mr. Rohit Bras De Sa. In any case, there is no reason at this stage to require any of the parties to make any concession because, if the restoration is applied for on the immediate next day, then, normally, the trial court, will restore the suits.

7. With the aforesaid observations, these appeals are disposed off.

8. All concerned to act on the basis of the authenticated copy of this Order.

9. The civil applications in these appeals do not survive and even the same are disposed off.

M. S. SONAK, J.

msr.