

IN THE HIGH COURT OF BOMBAY AT GOA

***CIVIL APPLICATION NO.135 OF 2019
IN
FIRST APPEAL NO.94 OF 2019***

OWEN XAVIER D'MELLO
AND OTHERS.

.... Petitioners

Versus

SANJIV O BERRY & ORS.

.... Respondents

Mr. M. B. D'Costa, Senior Advocate along with Ms. K. Betquecar,
Advocate for the Petitioner.

Mr. A. D. Bhobe with Ms. Andrea Rodricks, Advocates for the
Respondents No.1, 2 and 3.

Mr. Vijay Palekar, Advocate for the Respondent No.4.

Coram:- M.S. SONAK &
SMT. M. S. JAWALKAR, JJ.

Date:- 3rd February, 2020

P.C.:

Heard Mr. M. B. D'Costa, learned Senior Advocate along with
Ms. K. Betquecar for the applicants, Mr. A.D. Bhobe, learned counsel
for respondents no.1, 2 and 3 and Mr. V. Palekar for respondent no.4.

2. Though, there is some issue about service upon some of the respondents, taking into consideration the fact that interim relief which is now applied for is really against the respondents no.1, 2 and 3, we proceed to dispose of this application.

3. The appeal against the impugned judgment and decree has already been admitted. During the pendency of the suit, the applicants, had in their favour, an interim order which had effectively restrained the respondents no.1, 2 and 3 herein from selling, alienating or parting with the possession of the suit property. Now that the appeal is admitted, ordinarily, the said position is required to continue.

4. In the reply filed on behalf of respondents no.1, 2 and 3 the continuance of such relief is no doubt objected inter alia on the ground that once the trial court, on merits and upon appreciating the evidence, has found that the applicants have made out no case for grant of final reliefs, there is no good reason for the restraint to remain during the pendency of the appeal. However, quite fairly the respondents no.1, 2 and 3 in a portion of paragraph 9 of their affidavit in reply have, without prejudice, made the following proposal:-

“ Without prejudice to any of the contentions and/or without prejudice to any of the contentions referred to herein above, these Respondents state that in the event this Hon'ble Court deems it fit and proper in the facts and circumstances of

the present case then this Hon'ble Court be pleased to consider the relief to the limited extent of directing that these Respondents not sell the suit property and/or not to mortgage/create a charge on the suit property pending the present appeal.”

5. According to us, if any order is made in the aforesaid terms, the same will, substantially protect the interest of the applicants. However, further restraint will have to be imposed upon respondents no.1, 2 and 3 in the matter of parting with the possession of the suit property or creating any third party rights therein.

6. At this stage, Mr. Bhobe points out that since, respondents no.1, 2 and 3 reside in Mumbai, it may be necessary for them to induct some licensee or caretaker to effectively look after the said property.

7. According to us, at this stage, it is not possible to grant any leave to respondents no.1, 2 and 3; however, if there is any concrete proposal, we grant leave to respondents no.1, 2 and 3 to apply to this Court and such application, can then be considered on its own merits and in accordance with law, if necessary, by imposing terms upon the proposed caretaker or the licensee.

8. Accordingly, we dispose of this civil application by restraining the respondents no.1, 2 and 3 from selling, mortgaging, creating charge or parting with the possession of the suit property, without seeking leave of this Court.

9. The civil application is disposed of in the aforesaid terms.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.