

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER No. 51 OF 2013

WITH

CIVIL APPLICATION NO.170/2013

Dilip Voicunto Sinai Bobo

Major in age,

R/o block no.1, UG-2,

Essar Residency, Amaral Waddo,

Taleigao, Post Caranzalem, Goa.

...Appellant.

Versus

- 1). Voicunto Xabuli Sinai Bobo (since deceased)
- 1(a). Smita Mahesh Bhobe,
W/o. Mahesh V. Bhobe
- 1(b). Smt Sandhya Jeetandra Bhobe,
W/o Jeetendra V. Bhobe,
Major in age,
Both R/o. Block No.4,
Stair Case No.2, Flat No.S-3,
Kamat Complex, Tonca, Caranzalem,
Goa-403002.
- 1(c). Smt Rekha Dilip Sinai Bhobe,
W/o. Dilip V. S. Bhobe,
Major in age,
R/o. Block No.4, Stair Case No.2,
Flat No.S-3, Kamat Complex,
Tonca, Caranzalem,
Goa-403002.
- 1(d). Yogesh Ashok Pai Raikar,
Husband of Synthia U. Bhobe,

Major in age,
Mangala Offset,
G-11/12, Helena Apartments,
Swatantra Path, Vasco-Da-Gama,
Goa-403802.

- 2). Mahesh Vaicunta Bhobe
- 3). Jeetendra Vaicunta Bhobe,
Both major in age,
Both r/o block no.4,
Staircase no.2, flat no.S-3,
Kamat Complex, Tonca, Caranzalem,
Goa-403002.
- 4). Vatsala Vaicunta Bhobe alias Vinaya
Vaicunta Bhobe,
Major in age,
R/o. Building no.5,
Flat no.5-F-1, Kamat Estate,
Tonca, Caranzalem,
Goa-403002.
- 5). Mr. Bogvonta Xabuli Sinai Bobo,
Major in age,
R/o Usha Kiran, F3, 18/86/3,
Cardozo Waddo,
Nr. Village Panchayat Office,
Taleigao, Goa-403002.
- 6). Mrs. Manicbai Bogvonta Bobo
Through LR's
- 6a). Audhut Bogvonta Bhobe (son)
- 6b). Manda alias Mandakini Bhobe
(daughter-in-law),
Both major in age,
Both r/o Hotel Indira Niwas,

next to Trionora Apts,
Nr. Municipal Market,
Panaji, Goa.

- 6c). Kiran Bogvonta Bhobe (son)
- 6d). Usha Kiran Bhobe (daughter-in-law),
Both major in age,
Both R/o. Usha Kiran, F3, 18/86/3,
Cardozo Waddo,
Nr. Village Panchayat Office,
Taleigao, Goa-403002.
- 6e). Vandana Suraj Kamat (daughter)
- 6f). Shri Suraj Govind Kamat (son-in-law),
Both major in age,
Both R/o Kamakshi Prasad,
Opp. Hotel NH 17,
Porvorim, Bardez, Goa.
Cardozo Waddo, Nr. Village
Panchayat Office, Taleigao,
Goa-403002.
- 7). Mrs. Suman Uday Bhobe,
- 8). Ms. Synthia Uday Bhobe,
- 9). Mr. Sanket Uday Bhobe,
All major in age,
all residents of 'Yogiraj, Plot No.110,
PDA Colony, Alto Porvorim,
Bardez, Goa-403521.

...Respondents.

Mr. V. A. Lawande, Advocate for the Appellant.

Mr. Valimiki Menezes, Advocate for Respondents No. 1(a) and 2.

Mr. Parikshit Sawant, Advocate for Respondent No.1(d).

Coram : M.S. Sonak, J.

Date : 10th September, 2020.

ORAL JUDGMENT:

Heard Mr. V.A. Lawande for the Appellant, Mr. Valmiki Menezes for Respondent No.1(a) and 2 and Mr. Parikshit Sawant for Respondent No.1(d).

2. This is an appeal against the Order dated 18.5.2012, made by the Civil Judge, Sr. Division, Panaji declining interim reliefs to the Appellant-original plaintiff in Special Civil Suit No.13/2010/A.

3. In the Civil Application taken out in this Appeal for interim relief, on 6th September, 2013, this Court made the following order :

“Heard Mr. V. A. Lawande, learned counsel appearing for the applicant and Mr. V. Menezes, learned counsel appearing for the respondent nos. 1 to 4 and 7 to 9.

2. Issue notice to the respondents, returnable on 03.10.2013.

3. Mr. Lawande, learned counsel appearing for the applicant has prayed for an ad-interim relief until the returnable date as according to him the applicant has been excluded from the right to the inheritance of his parents on the basis of some alleged documents executed in favour of the respondents herein. The learned counsel has also pointed out that without consent of the applicant, some transactions are being carried out by the respondents on the basis of the agreements dated 17.01.2003, 31.10.2005 and

05.06.2007. It is the contention of Mr. Lawande, learned counsel appearing for the 2 applicant that the beneficiaries of the said agreements are a partnership firm which according to him consists of two partners who are the respondent nos. 2 and 3.

4. Mr. V. Menezes, learned counsel appearing for the respondent nos. 1 to 4 and 7 to 9 has disputed the said contention. The learned counsel has pointed out that the alleged suit property has not been properly identified nor the subject matter of the alleged eight plots which have been purported to have been allotted to the parents of the applicant have not been identified. It is also pointed out that there is nothing on record to show that the partnership firm is consisting of the said two partners only.

5. In the facts and circumstances of the case and without going into the correctness of the above contentions, I find it appropriate in the interest of justice and considering that it cannot be disputed that the applicant is otherwise entitled to the inheritance of the parents, until returnable date, the respondents shall not create any further third party right in respect of the properties which are subject matter of the said three agreements dated 17.01.2003, 31.10.2005 and 05.06.2007.”

4. When this matter was taken up for final disposal Mr. Menezes, the learned Counsel for some of the Respondents pointed out that in pursuance of the agreements referred to in the aforesaid order, even sale deeds have been executed. He points out that most of the sale deeds were executed even prior to the institution of the suit. He points out that the sale deeds are mainly in favour of M/s. Mahalaxmi Builders, which has not even been impleaded as party in the suit, as well as in this appeal. Mr. Menezes and Mr. Sawant point

out that there is absolutely no perversity in the view taken by the learned trial Judge and, therefore, keeping in mind the limited scope of such appeal, as explained by the Hon'ble Apex Court in *Wander Ltd. and anr. vs. Antox India P. Ltd.*¹, this Appeal should be dismissed.

5. Mr. Lawande, the learned Counsel for the Appellant, however, pointed out that in this case, the Appellant is the only son of the late Voicunta Xabuli Sinai Bobo (original Respondent No.1), who has been excluded from the rights to the family properties. He submits that the partnership firm is not in the strict terms a legal entity, but it is only a collective name for the partners. He points out that the partnership firm M/s. Mahalaxmi Builders comprises only Respondent No.1(a) and Respondent No.2, as its partners. He points out that in such circumstances, the interim relief applied for by the Appellant before the trial Court and renewed before this Court was required to be granted.

6. Considered the rival submissions. In this case, the suit was instituted in the year 2010 and by now, the same, in fact, should have been disposed of, on merits. The learned Counsel for the parties submit that the pleadings are complete and the issues have been framed and the matter was in fact posted for recording evidence. However, on account of pandemic situation, it is possible that the

¹ 1990(S) SCC 727

recording of evidence has not commenced.

7. Since 6th September, 2013 there is an ad interim order in operation and, therefore, initially I was inclined to continue the same in the very same terms in which it was granted and direct expeditious disposal of the Suit. However, the affidavit filed on behalf of some of the Respondents, whom Mr. Menezes represents, makes categorical statements that in pursuance of the agreements referred to in the order dated 6th September, 2013, sale deeds have already been executed even prior to the institution of the suit. In these circumstances, continuance of such interim relief will be virtually futile and would lead to unnecessary complications in the matters of interpretations.

8. On perusal of the Order dated 6th September, 2013, it does appear that the intention was to maintain some sort of *status quo*. However, even while directing the parties to maintain *status quo*, it is necessary that the precise character of the status quo is recorded, so that there are no difficulties about interpretations.

9. In this case, it transpires that Flat No.12/S-2 and shops No.35 and 36 in Building No.3, Kamat Complex Co-operative Housing Society, are presently owned by the partnership firm M/s. Mahalaxmi Builders. This firm comprises of Respondent No.2 and Respondent No.1(a), as its partners. Mr. Menezes, without prejudice

to the rights and contentions of these parties, on instructions, makes a statement that this flat and the two shops will not be disposed of by executing any sale deed or by agreement for sale. He, however, states that this statement should not be taken to cover the lease of the two shops.

10. According to me, the aforesaid statement will constitute sufficient interim relief at this stage in favour of the Appellant. Besides, the learned trial Judge has also clarified that in case of any transfers in relation to the suit properties, the doctrine of *lis pendens* will apply. This position is now reiterated. Therefore, even if there is any transfer of suit properties, or any portions thereof, such transfers are to be subject to the final orders in Special Civil Suit No.30/2010/A. Further, it is directed that the transferees should be informed that such transfers are subject to further orders in the suit and therefore, no equities can be claimed. All this, to my mind, is sufficient to protect the interest, if any, of the Appellant.

11. Mr. Lawande expresses apprehension that any liberty to lease out *i.e.* the two shops might leave the Appellant with nothing even if he succeeds in the suit. This is not correct. Such transfer, by way of lease, will always be subject to further orders in the pending suit. The potential lessee will have to be informed of this and the potential lessee will not be entitled to claim any equities in the matter.

12. This interim arrangement is not to be taken as any reflection on the merits of the matter. The fact that the suit itself is old and should have been disposed off by now and some sort of interim relief was in operation since 6th September, 2013 is what has really weighed in directing this interim arrangement.

13. The Appeal is, therefore, partly allowed and the parties will now abide by the interim arrangement now spelt out in this order. The statement made by Mr. Menezes is accepted as statement made to the Court.

14. The learned Trial Judge is directed to dispose off the Special Civil Suit no. 13/2010/A as expeditiously as possible and preferably within six months from today. This is because the suit is pending since 2010 and the learned Counsel for the parties have assured this Court that they will cooperate in the expeditious disposal, without seeking any unnecessary adjournments.

15. The learned Trial Court will have to decide the suit on its own merits, without being influenced by any observations made or findings recorded or referred by itself or this Court. All contentions of all parties are expressly left open.

16. The appeal is disposed off in aforesaid terms. The civil application also does not survive and is disposed off.

17. There shall be no orders for costs.
18. All concerned to act on the authenticated copy of this order.

M.S. Sonak, J.