

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1188 OF 2018**

Mr. Jayprakash Karekar, son of Ramnath Karekar, major of age, married, Businessman, Indian National, resident of H. No. C-106, Brundawan Nandanvan Complex, Caranzalem - Goa.

.... Petitioner

Versus

1. Smt. Laxmi Vaman Raut, Major of age, housewife, widow of late Vaman Raut;
2. Mr. Gopal @ Deelip Vaman Raut, Major of age, Agriculturist cum Business, son of late Vaman Raut;
3. Mrs. Deepti Gopal Raut, Major of age, housewife, wife of Gopal Vaman Raut;
4. Mr. Ghanasham Vaman Raut, Major of age, Business, son of late Vaman Raut;
5. Mr. Megasham Vaman Raut, Major of age, service, son of late Vaman Raut;
6. Miss Manisha Vaman Raut, Major of age, daughter of late Vaman Raut;
7. Smt. Geeta Sandeep Raut, Major of age, service, wife of Sandeep Vaman Raut;
8. Mr. Sandeep Vaman Raut, Major of age, Agriculturist cum Business, son of late Vaman Raut, For self and as a duly constituted Attorney of Respondent Nos. 1 to 7 above, All residents of House No. 187/1, Madhlawada, Sal, Bicholim Goa.
9. Smt. Ramabai Soma Raut (since deceased) Major of age, widow of late Soma Dattaram Raut;
10. Smt. Laxmi Raut, Major of age, widow of late Ramakant Soma Raut;
11. Mr. Mayur Ramakant Raut, Major of age, son of late Ramakant Soma Raut;

12. Mr. Soma Ramakant Raut, Major of age, son of late Ramakant Soma Raut;
13. Smt. Kashibai Dattaram Raut, major of age, widow of late Dattaram Soma Raut;
14. Ms. Sahili Dattaram Raut, major of age, daughter of late Dattaram Soma Raut;
15. Mr. Akshay Dattaram Raut, major of age, son of late Dattaram Soma Raut;
16. Mr. Shekhar Soma Raut, major of age, son of late Soma Dattaram Raut;
17. Mrs. Sharmila Shekhar Raut, Major of age, wife of Shekhar Soma Raut;
18. Mr. Rajesh Soma Raut, major of age, son of late Soma Dattaram Raut;
19. Mrs. Swati Rajesh Raut, Major of age, wife of Mr. Rajesh Soma Rent, All residents of Varchawada, Sal, Bicholim Goa.
20. Smt. Shubhangi Digamber Parab, Major of age, married to
21. Mr. Digamber Parab, Major of age, Both residing at Vengurla.
22. Smt. Aparna Umakant Rane, Major of age, married to
23. Mr. Umakant Rane, Major of age, Both residing at Redi, Sawantwadi.
24. Smt. Sarwaswati Sagun Palienkar, Major of age, married to
25. Mr. Sagun Palienkar. Major of age, Both residing at Saligao, Bardez-Goa.
26. Smt. Taraka Uday Sawant, Major of age, married to
27. Mr. Uday Sawant, Major of age, Both residing at Vengurla.
28. Smt. Usha Naguesh Kamat, Major of age, widow of late Naguesh Kamat.
29. Shri. Rahul Naguesh Kamat, Major of age, son of late Naguesh Kamat;

30. Mrs. Radhika Jagdish Malik, Major of age, married to
31. Mr. Jagdish Suresh Kamat, Major of age,
All residents of Bordem, Bicholim - Goa.
32. Smt. Smita Santosh Gad, Major of age, married to
33. Shri. Santosh Gad, Major of age.
Both residing at Bombay.

The parties at Sr. Nos. 9 to 17, 29 to 28, 32 and 33 are represented by their duly constituted Attorney,
Mr. Rajesh Soma Raut, major of age, son of late Soma Dattaram Raut, resident of Varchawada, Sal, Bicholim - Goa.

34. Smt. Mangala Ramnath Karekar, Major of age, widow of late Ramnath Karekar;
35. Mrs. Smita Jayprakash Karekar, Major of age, wife of Jayprakash Karekar;
36. Mr. Prashant Ramnath Karekar, Major of age, son of late Ramnath Karekar;
37. Mrs. Mita Prashant Karekar, Major of age, wife of Prashant Karekar;
38. Mr. Digamber Ramnath Karekar, Major of age, son of late Ramnath Karekar;
39. Mrs. Shruti Digamber Karekar, Major of age, wife of Digamber Ramnath Karekar;
All residents of H. No. C-106, Brunadawan, Nandanvan Complex, Caranzalem Goa.

.... Respondents

Mr. Shivan Desai, Advocate for the Petitioner.
Mr. Ashwin D. Bhobe with Mr. Sagar Sarmalker, Advocates for Respondent Nos. 1 to 8.
Mr. V. R. Tamba with Mr. P. Sawant, Advocates for Respondent Nos. 16 and 17.

CORAM :- C. V. BHADANG, J.

RESERVED ON :- 30th Sept., 2019

PRONOUNCED ON :- 27th April, 2020

JUDGMENT:

Rule made returnable forthwith. The learned Counsel for the respective respondents waive service. Heard finally by consent of parties.

2. The challenge in this Petition under Article 227 of the Constitution of India, is to the judgment and order dated 17.11.2018 passed by the learned District Judge at Mapusa in Miscellaneous Civil Appeal No. 31/2018 thereby confirming the order dated 20.02.2018 passed by the learned Civil Judge Junior Division at Bicholim in Regular Civil Suit No. 62/2013. By the said order, an application Exhibit D-24 for temporary injunction filed by the petitioner, has been dismissed.

3. The brief facts necessary for the disposal of the Petition may be stated thus:

The petitioner is the defendant no. 27 in the aforesaid suit pending before the Trial Court. That suit is filed by respondent nos. 1 to 8 (plaintiffs) against the petitioner (defendant no. 27) and the respondent nos. 9 to 39. That suit is filed for declaration, cancellation of sale deed and permanent

injunction. The subject matter of dispute is property bearing survey nos. 212/3, 212/2 (part) and 213/0 of village Sal, admeasuring 73,936 square metres, which is locally known as “Polsocho Sorvo” or “Firangeche Gulav”, which is more specifically described in plaint para no 1. According to the plaintiffs, the said property corresponds to old cadastral survey no. 351. The plaintiffs are the successors of Gopal Shiva Raut. The case made out in the plaint is that the said property was owned by Gopal Shiva Raut. The said property was mortgaged by Gopal Shiva Raut alongwith his wife Gopiki and others by a Deed of Usury Mortgage and Consignment dated 21.5.1929. However, the possession of the said property continued with Gopal Raut. The said mortgage was released by Gopal Raut by a public deed dated 02.02.1930 upon payment of the entire debt. The plaintiffs have also placed reliance on the proceeding in summary suit filed by one Narayan Soma Raut against Rama Chandru Raut and Krishna Chandru Raut in the year 1929, in which, it is claimed, that the heirs of late Chandru, admitted the ownership of Gopal Raut over the suit property. Reliance is also placed on criminal proceedings filed in respect of the suit property by Gopal Shiva Raut in the year 1929 against Narayan Soma Raut and by one Krishna Chandru Raut in the year 1956 against Vaman Gopal Raut in order to claim that Gopal Raut

was the owner in possession of the said property.

4. It is the material case made out that in February/ March 2013, the plaintiff nos. 2 and 8 learnt that a police complaint has been filed against them by the petitioner alleging illegal trespass by them in the said property. The plaintiffs thereafter obtained Form No. I and XIV of the said property and noticed that the said property has been mutated in the name of the petitioner on the basis of a sale deed dated 22.8.1994 executed by Soma Dattaram Raut and Ramabai Soma Raut in favour of Mangala Karekar defendant no. 26, who is the mother of the petitioner and Inventory Proceeding No. 42/2003 decided on 30.11.2006. The plaintiffs also found that the mutation entries nos. 17774, 17775 and 17777 were accordingly recorded. The plaintiffs obtained the certified copies of the sale deed as well as the mutation entries. The plaintiffs found that the description no. 3325 given in the sale deed is not relating to the suit property. In other words it is contended that the petitioner or the defendant nos. 26 to 32 cannot claim any right, title or interest in respect of the said property on the basis of the said sale deed. It is in these circumstances that the suit came to be filed for cancellation of the said sale deed to the extent it relates to the suit property (in as much as the sale

deed also includes property survey nos. 214/1 and 214/2 apart from the suit property) and other consequential reliefs.

5. The defendant no. 1, who is the wife of Soma Dattaram Raut and the defendant nos. 2 to 20 and 24, who are the legal heirs claimed that the sale deed is executed under compelling circumstances and they supported the claim of the respondent nos. 1 to 8 being the owners of the suit property.

6. The petitioner resisted the suit and raised a counter claim seeking injunction against respondent nos. 1 to 8 (original plaintiffs) from interfering in any manner with the suit property. The case made out by the petitioner, in the counter claim, is that the said property was jointly purchased by Soma Dattaram Raut and one Ankush Esvanta Bandre, from Purushottam Porobo Mambro and his wife Vinanti Mambro, under a sale deed dated 14.07.1947. It was contended that by sale deed dated 20.04.1954, Ankush Bandre, who was a widower, sold his half share out of the said property to one Xanti Xeuntu Naique without giving an option of first purchase (Preemption), to said Soma Dattaram Raut. Soma therefore filed Civil Suit No. 205/1942 against Xanti and in pursuance of a decree passed in the said civil suit, the possession of the half

share was given to Soma on 20.10.1983. Thus, by virtue of the Court order, Soma became the owner of the remaining half of the said property. It is contended that Soma with his wife Ramabai has sold the property to Mangala Karekar, mother of the petitioner by a sale deed dated 22.08.1994. The petitioner has also relied upon the inventory proceedings initiated on the death of Ramnath Karekar, who expired on 06.09.2001. The petitioner is also placing reliance on the permissions/NOCs obtained in respect of three structures standing in the said property. It is contended that the property has been mutated in the name of the petitioner. It is contended that the respondent nos. 1 to 8 are trying to disturb and interfere with the possession of the petitioner over the suit property. It is in these circumstances that the petitioner sought the relief of permanent injunction in the counter claim. The petitioner filed application Exhibit D-24 for temporary injunction in the aforesaid terms.

7. The application has been resisted by the respondent nos. 1 to 8.

8. The learned Trial Court by an order dated 20.02.2018 dismissed the application, which order has been

confirmed by the learned District Judge.

9. I have heard Mr. Desai, the learned Counsel for the petitioner and Mr. Bhobe, the learned Counsel for the contesting respondent nos. 1 to 8. The parties have also filed written submissions on record. I have gone through the same.

10. Mr. Desai, the learned Counsel for the petitioner has strenuously urged that the Appellate Court has proceeded on the wrong assumption and premise that the petitioner had admitted that the respondent nos. 1 to 8 (original plaintiffs) were in possession of the suit property. The learned Counsel has pointed out the pleadings of the petitioner in this regard in which the petitioner has specifically denied that the plaintiffs are in possession of the suit property. It is submitted that the Appellate Court has erred in discarding and/or not advertng to the public and private documents of title and possession, relied upon by the petitioner. It is submitted that the description and the inscription certificate produced by the petitioner clearly establish that the suit property is described under no. 3325, which pertains to Polosacho Sorvo and the said entire property was described in the name of Soma Dattaram Raut and Ankush Bondre. It is submitted that the inscription records are title

documents under Article 953 of the Portuguese Civil code. It is thus submitted that these records clearly establish the ownership of Soma Raut. It is submitted that the order of the Civil Court in Civil Suit No. 205/1942 clearly establishes that Soma Raut was put in possession of the half portion of the property described under no. 3325, which is mentioned at serial no. 10 of the warrant, after Soma Raut succeeded in the suit against Xanti Naique. It is submitted that consequently the name of Xanti was deleted by order dated 06.12.2019. It is submitted that the name of Soma was recorded in Form No. I and XIV of the property. The learned Counsel has then referred to the sale deed dated 22.08.1994 in favour of Mangala Karekar and the record of the inventory proceedings initiated on the death of Ramnath Karekar in order to submit that they conclusively show the ownership and possession of the petitioner over the suit property. It is submitted that the name of the petitioner has also been mutated in the revenue record long back which has a presumptive value under Section 105 of the Land Revenue Code. The learned Counsel has then referred to several other documents such as mortgage deed in favour of Indian Overseas Bank valuation report given by Advocate Sardessai, house tax receipts, electricity bills, letter by Health Department and a letter for regularisation of the

farmhouse and the cowshed both of the year 1999 and finally the letter dated 11.6.1994 by Soma Raut and the letter dated 09.01.1995 from the Superintendent of Survey, pertaining to the proceedings as to fixation of the boundaries. It is submitted that the Appellate Court has not considered these documents and has erroneously held that the petitioner has failed to establish *prima facie* case.

11. It is submitted that both the Courts below have erred in discarding the documents relied upon by the petitioner and has proceeded on the basis of Cadastral survey record, which is erroneous. It is submitted that the Cadastral survey has no relevance after the finalization and the promulgation of the survey records under the Land Revenue Code. Reliance in this regard is placed on the decision in the case of **Damodara Ranum Porobo Loundo Vs. Shri Bhasker R. Jalmi and Others 1990 (2) Goa L.T. 407**. It is submitted that the evidence in the form of affidavits, cannot be relied upon to displace the presumption under Section 105 of the Land Revenue Code. It is submitted that even otherwise, the affidavits are of persons who are interested and dependents and thus, cannot be accepted or relied upon.

12. It is submitted that the finding by the Appellate Court that the respondent nos. 1 to 8 have *prima facie* established their ownership and possession over the suit property is patently erroneous and perverse. It is submitted that the documents on which reliance is placed by the plaintiffs cannot be said to be title documents and cannot outweigh the title documents of the petitioner. It is submitted that the entire case of the petitioner is based on the name of the property, namely, Polsacho Sorvo. It is submitted, on the basis of the rejoinder filed on behalf of the petitioner, that there are several other survey numbers in Bicholim, as set out in the rejoinder, which are also known as Polsacho Sorvo. It is submitted that in any case the local name of the property cannot override the effect of the title documents which alone have to prevail.

13. The learned Counsel for the petitioner has then referred to the judgment and order dated 19.11.2015 passed by the learned District Judge at Mapusa in Regular Civil Appeal No. 105/2012. It is submitted that the claim of the respondent nos. 1 to 8 that the property Polsocho Sorvo described under no. 7609 corresponds to survey nos. 215/0, 168/1 and 169/1 and also corresponds to old Cadastral survey no. 612 has been discarded. It is submitted that this has not at all been

considered by the learned District Judge, which shows non application of mind. Lastly, it is submitted that the the exercise to compare the boundaries and to find some alleged discrepancies is not sustainable.

14. Mr. Bhobe, the learned Counsel for the contesting respondent nos. 1 to 8 has supported the impugned judgment and order. It is submitted that, it is the petitioner who has sought the temporary injunction, in the counter claim filed by him. Thus, it is for the petitioner to demonstrate the existence of *prima facie* case, irreparable loss and balance of convenience, for grant of the temporary injunction, which the petitioner has failed to do. The learned Counsel has basically relied upon the aspect of the identity of the property allegedly purchased by the petitioner under sale deed dated 22.08.1994. It is submitted that the identity of the property is not established on the basis of the land registration number or the boundaries. It is submitted that the documents relied upon by the petitioner do not show that the property bearing land registration no. 3325 corresponds to the suit property, which is allegedly purchased by the petitioner, under the aforesaid sale deed. It is submitted that land registration no. 3325 makes reference to the southern boundary as a drain/rivulet, which

does not tally with the survey plan. It is submitted that the reliance placed on the warrant of the Civil Court dated 20.10.1983 is misplaced, in as much as, the said warrant does not make any reference to survey number of the property which was subject matter of the said warrant. It is submitted that Form No. I and XIV is incorrect and any presumption arising under Section 105 of the Land Revenue Code, stands rebutted. Reliance is placed on the decision of the Supreme Court in the case of **Daya Singh Vs. Gurudev Singh (2010) 2 SCC 194**, in order to submit that mere adverse entries in the record of rights do not give rise to cause of action, unless there is infringement or threat to the right.

15. It is submitted that the order passed in the inventory proceedings is not a title document, in as much as, such proceedings are non adversarial in nature. It is submitted that none of the other documents on which reliance is placed by the petitioner can be said to be title documents.

16. It is the alternate submission on behalf of the petitioner that the property bearing land registration no. 3325 could be the property situated beyond the rivulet i.e. the northern boundary of the property bearing survey no. 212/2.

Reliance is placed on the decision in the case of **Mulji Umershi Shah Vs. Paradisia Builders Pvt. Ltd. AIR 1998 Bombay 87**, in order to submit that inquiry into title is not excluded even at the stage of consideration of an application for temporary injunction. It is submitted that even the vendors of the petitioner have not supported the case of the petitioner, which would be evident from the written statement filed by defendant nos. 1 to 20 and 24.

17. It is submitted that the petitioner has shown that the suit property corresponds to old Cadastral survey no. 351 and land description no. 7609 and inscription no. 1190, which is also evident from the boundaries showing a drain towards the north. It is submitted that the reliance placed on behalf of the petitioner on the judgment in Regular Civil Appeal No. 105/2012 is misconceived and mischievous. It is submitted that the subject matter of the said Appeal are properties bearing survey nos. 215/0, 168/1 and 169/1, which are some of the properties described in land registration no. 7609. It is however submitted that the aforesaid survey numbers correspond to old Cadastral survey no. 612 and not 351 as in the present case. Reliance is placed on the decision in the case of **Vaman Govind Raut Vs. Sitaram Narayan Raut** (Second

Appeal No. 55/2003 decided on 30.01.2016).

18. Insofar as the observation of the learned Appellate Court in para 26 is concerned, it is submitted that, it appears to be a typographical error, as in all probability, the Appellate Court intended to make reference to the written statement of defendant nos. 1 to 20 and 24 and not the defendant no. 27 i.e. the petitioner. It is submitted that even otherwise the said stray observation does not come in the way of the finding, which is otherwise recorded by the Appellate Court while *prima facie* testing the title of the petitioner. He therefore submits that the Petition be dismissed.

19. I have carefully considered the rival circumstances and the submissions made and I find that the Petition has to partly succeed. *Prima facie*, it can be seen that the case of the petitioner is based on the sale deed of the year 1994 in favour of the mother of the petitioner and the consequent inventory proceedings initiated on the death of his father Ramnath Karekar amongst other documents. The name of the petitioner has been mutated in the record of rights long back. According to the petitioner, the property corresponds to land registration no. 3325. On the contrary, the respondent nos. 1 to 8,

(plaintiffs) claim that the suit property corresponds to old Cadastral survey no. 351 and description no. 7609 and inscription no. 1190. These respondents have basically raised a dispute as to the identity of the property on the basis of the comparison of the boundaries in the old records. Reliance is also placed on certain proceedings including the criminal cases of the year 1929 and 1956.

20. A perusal of the order passed by the learned Trial Court would indicate that the Trial Court has considered the issue of *prima facie* case in paras 13 to 19 of the order. The learned Trial Court has noticed the sale deed of the year 1994 in favour of the mother of the petitioner and the order in the inventory proceedings initiated upon the death of Ramnath Karekar. The Trial Court has also noticed that the name of the petitioner is recorded in the revenue record and the fact that the certificate dated 26.6.2013 issued by the Directorate of Settlement and Land Records shows that the suit property is having two old Cadastral survey nos. 14(part) and 351(part). The Trial Court has basically gone on the old Cadastral record of survey no. 351 and the report prepared by Mr. Dhuri to hold that the petitioner has failed to establish any *prima facie* case.

21. A perusal of the impugned judgment and order of the learned Appellate Court, would indicate that the learned Appellate Court has principally gone on the basis that the petitioner (original defendant no. 27) has admitted that the respondent nos. 1 to 8 (original plaintiffs) are in possession of the suit property, which is clearly contrary to the pleadings of the petitioner in para 48 and 58 of the written statement cum counter claim. This is what the learned Appellate Court has observed in para 26 of the judgment:

“It is not in dispute that from the pleadings of the defendant no. 27, it is admitted that the plaintiffs are in possession of the suit property. Therefore, there is no question of restraining the plaintiffs, their agents and servants from interfering in the suit property by granting the present application for temporary injunction, which would amount to evicting the plaintiffs from their settled possession of the suit property.”

It cannot be accepted that the reference to defendant no. 27 is a typographical error as claimed on behalf of the respondent nos. 1 to 8. It can thus be seen that the *prima facie* finding as to the alleged settled possession of the respondent nos. 1 to 8 over the suit property, as recorded by the learned Appellate Court, is based on the erroneous assumption that the petitioner has not disputed the same. This

in my considered opinion clearly shows non application of mind by the learned Appellate Court, while recording an important finding, having a bearing on the grant or otherwise of the relief of temporary injunction. The Appellate Court has held that the judgments relied on by the petitioner would not apply, as the petitioner has failed to establish *prima facie* case, which finding as noticed earlier, is based on the erroneous assumption that the possession of the respondent nos. 1 to 8 is not disputed by the petitioner.

22. I have extensively set out the other rival submissions made on behalf of the parties, which arose in the matter. I find that all these contentions were required to be dealt with by the learned Appellate Court in its judgment. Even assuming that an Appeal under Order XLIII of the Code of Civil Procedure, is an appeal on principle, the Appellate Court is expected to closely consider the rival pleadings of the parties in the context of the finding recorded by the learned Trial Court and the settled principles as to grant of temporary injunction. In my considered view, the principle issue is about the effect of a registered document of sale deed as against the old record as to the Cadastral survey and the documents of inscription and description. The learned Appellate Court, in my considered

view, has failed to address itself as to the relevant considerations in the context of the rival pleadings and the findings recorded by the learned Trial Court.

23. In such circumstances, I find that it would be appropriate to remit the matter back to the Appellate Court for deciding the same afresh on its own merits and in accordance with law. In the result, the Petition is partly allowed. The impugned judgment and order, passed by the learned Appellate Court, is hereby set aside. Miscellaneous Civil Appeal No. 31.2018 is restored to the file of the learned District Judge at Mapusa, for deciding it afresh on its own merits and in accordance with law. Parties to appear before the learned District Judge on 08.06.2020 at 10:00 a.m. Rival Contentions of the parties are left open. Rule is partly made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

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