

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.149 OF 2021.

LEO JOSEPH CRUZ DSOUZA
AND ANR

... Petitioners.

VS

JOHN WILFRED
FERNANDES AND 3 ORS.

... Respondents.

Shri Shivraj Gaonkar, Advocate for the petitioner.

Shri Shivan Desai, Advocate for the respondent nos. 1 and 2.

Coram: DAMA SESHADRI NAIDU, J.

Date : 7th April 2021.

ORDER:

The dispute seems to involve several family members; one branch secured a decree on 30.6.2009 and laid execution against other members of the extended family. In the course of time, the parties concerned attempted to settle their differences, and that settlement has resulted in more than one Memorandum of Understanding, involving the builder, too.

2. The petitioners were initially represented by a particular counsel before the Executing Court. In the course of time, the decree holder applied to the Executing Court to attach a specific piece of property belonging to the all the judgment debtors. Their counsel did not object; rather, he assented to it. In this context, the petitioners contend that their counsel was a stranger to them but was introduced by the very builder, who is not only power of attorney holder of the

decree holders but also a person interested in developing the property. It is at the instance of this builder the parties entered into those MOUs. So, the petitioners are said to have trusted his word and relied on the counsel introduced by him.

3. According to the petitioners, without any instructions from them, their erstwhile counsel played fraud on them and consented to the attachment. It seems the petitioners lodged a police complaint against that counsel, besides complaining to the Bar Council of Maharashtra and Goa. Therefore, the learned counsel for the petitioners wants the Executing Court's impugned order recalled, for it has been vitiated by fraud.

4. But Shri S. Desai, the learned counsel for the respondent nos. 1 and 2, that is the decree holders, contends that the petitioners' allegations contain no substance. According to him, they have exhausted all other remedies and, now, have started blaming their counsel.

5. In this context, I have suggested to both counsel that they may as well invite an order from the trial Court on the merits about the attachment instead of washing dirty linen in the Court especially when it involves a practicing advocate. Of course, the petitioners are absolutely free to proceed against their former counsel as the law permits them. The allegations, after all, involve professional ethics, besides other fiduciary failings.

6. At any rate, I reckon it causes no prejudice to either party if the issue of attachment is adjudicated on the merits, nor any of their claims or contentions gets affected before the Executing Court.

7. In the end, I also place on record a word of appreciation for the learned counsel for the respondent nos.1 and 2, who has persuaded his client and got instructions to have the matter adjudicated on the merits.

8. Now, the learned counsel for the respondent nos.1 and 2, however, apprehends that pending the adjudication on the question of attachment, the judgment debtors may create third party rights over the property.

9. Under these circumstances, I hold that until the Executing Court decides on merits the decree holders' application of attachment, the judgment debtors shall create no third party right or interest over the property in question. The trial Court will decide the matter expeditiously.

Writ Petition stands disposed of accordingly.

DAMA SESHADRI NAIDU, J.

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