

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO.31 OF 2017

Smt. Shilpa Ashok Padate
@ Leela Krishuna Kesarkar
Through POA Dr Sonal Sawant

.... Appellant

Versus

Ashok Padate @ Raghoba
Bebdu Fotto & Ors.

.... Respondents

Shri Pravin Faldessai, Advocate for the Appellant.
Shri J.J. Mulgaonkar, Advocate for the Respondent No.2.
Shri Byron Rodrigues, Advocate for the Respondent No.3.

CORAM: DAMA SESHADRI NAIDU, J.

DATE: 25 JANUARY 2021

ORAL ORDER:

The original plaintiff claimed that the first defendant was her husband, and the second defendant her sister. According to her, after giving birth to a child, she fell ill and was unable to take care of the child. Then she invited her sister, the second defendant, to live with them and take care of both the mother and the child. When the second defendant joined the plaintiff's family, her husband, the first defendant, developed intimacy with the second defendant. They both gave a colour of matrimony to that illegal relationship, so pleaded the plaintiff.

2. The dispute concerns the property that stood in the first defendant's name. The original plaintiff, it seems, claimed that she contributed the consideration when her husband purchased the property. Though it stood in the first defendant's name, at least by Communion of Assets, the plaintiff claimed right in the property. But the second defendant illegally sold it to the third defendant. In that context, the original plaintiff filed the suit for declaration and other

consequential relief. In that suit, she wanted the trial court to injunct the third defendant from raising any structures on the disputed property. The trial Court refused the injunction. Aggrieved, the original plaintiff filed the present 'Appeal from Order' before this Court.

3. The original plaintiff filed the suit in 2015, and the trial Court refused injunction in 2017. This Appeal from Order has been pending ever since. All these years the original plaintiff never enjoyed any interim protection. That said, the trial is yet to begin.

4. As a matter of later developments, the original plaintiff and the first defendant have died. In their places, their respective legal representatives have come on record.

5. At this juncture, it may be inequitable for this Court to interfere when the trial court, earlier, refused to exercise its discretion in the plaintiff's favour. And all these years there has been no probatory order of whatever nature against the third defendant.

6. That said, I may add that any court's endeavour pending litigation is to ensure that the subject matter of the suit does not get dissipated or gets entangled in further legal wrangles. Here, though I am not inclined to interfere with the trial Court's order, dated 25.04.2017, I hold, to serve the ends of justice, that pending the disposal of the suit whatever developments take place on the disputed property shall be subject to the outcome of the suit.

In fact, all parties assure me that if the trial Court takes up the matter for early disposal, they will co-operate. I, therefore, direct the trial Court to dispose of the suit expeditiously.

DAMA SESHADRI NAIDU, J.

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