

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.114 OF 2020**

NARAYAN KRISHNA NAIK ... Petitioner

V/S.

PRAKASH UTTAM NAIK Respondent

Ms. Priyanka Kamat, Advocate for the petitioner.

Mr. A.D. Bhobe, Advocate for the respondent.

Coram:- SMT. BHARATI H. DANGRE, J.

Date :- 14th January, 2021

P.C.:

1. By the present writ petition the petitioner is assailing the judgment delivered by the District Judge-II, Panaji in an Misc. Civil Appeal directed against an order dated 14/06/2017 passed by the Civil Judge, Junior Division, Ponda in RCS No.150/2015/C. The said order reject the application for temporary injunction on 13/09/2017 and being aggrieved the appeal has been instituted.

With the assistance of the learned Counsel for the petitioner and the respondent I have perused the impugned judgment which affirms the findings recorded by the learned Trial Court.

2. In the appeal the Appellate Court had determined the issue as to whether the plaintiff had proved the existence of a prima

facie case in his favour and whether the non-grant of injunction would result into irreparable loss and hardship. Deliberating the said issue, the relevant facts were taken into consideration and which has a bearing. In nutshell it revolves around the property bearing Survey No.283/8 of Borim village and the plaintiff set its claim in the said property as a Mundkar of the property. He rest his claim on the basis of the order passed by the Mamlatdar where he has moved an application seeking declaration to that effect and the Mamlatdar by judgment and order dated 28/10/2014 issued a declaration in favour of the plaintiff as Mundkar of the said house. He had preferred an application before the Mamlatdar for purchase of the said house and also claiming customary access to the public road. It is only when there was an attempt on the part of the defendant to dispossess him, he filed a civil suit.

3. Both the Courts below have recorded that it is not in dispute that the plaintiff was declared as a Mundkar by declaration of the Mamlatdar. It was however alleged that the said declaration was obtained by playing a fraud on the Mamlatdar Court and by adopting a mode of misrepresentation. By recording of finding that in the proceedings which were instituted before the Mamlatdar that the two of the original owners were included as defendants, the one

of them Mr. Gurunath Janardhan Shenvi having been expired 40 years back and similarly Mr. Shantaram Borkar having been expired 18 years back. Attempts were made to serve the notice on defendant No.2 but the address was found to be incorrect and he was never served. Prima facie all these documents therefore according to the Court raised a doubt about the plaintiff's case which recorded finding in his favour that he is entitled for a declaration. Noting that when the question comes to granting equitable relief of temporary injunction, this fact could be looked into and since at the prima facie stage it was recorded that the declaration in favour of the plaintiff was doubtful and was backed by a misrepresentation, the said could be dismissed. The learned Counsel for the petitioner has vehemently submitted that the said order dated 28/10/2014 passed by Mamlatdar is subjected to challenge by the defendants in the year 2016 before the Deputy Collector and the same is pending for adjudication.

4. This may be accepted as a fact but the concurrent finding of the Courts below cannot be said to suffer from any infirmity since while granting the equitable relief of temporary injunction a prima facie case and balance of convenience are the necessary factors which would be given its due weightage. Finding

no infirmity in the order passed by the Appellate Court which is assailed in the Writ Petition, the direction which is sought by the learned Counsel for the petitioner is limited that is to expedite the suit. Since it is noted that the Regular Civil Suit No.150/2015/C is pending since 2015 and the period of 5 years has elapsed and since the parties state that the pleadings are complete, the Civil Judge Junior Division at Ponda before whom the said suit is pending is requested to expedite the suit and conclude it preferably within a period of one year from today.

5. The writ petition stands disposed of in the aforesaid terms.

SMT. BHARATI H. DANGRE, J.

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