

IN THE HIGH COURT OF BOMBAY AT GOA

**APPEAL FROM ORDER NO.67 OF 2019
WITH
CIVIL APPLICATION NO.232 OF 2019
AND
MISC. CIVIL APPLICATION NO.988 OF 2019**

**APPEAL FROM ORDER NO.67 OF 2019
WITH
CIVIL APPLICATION NO.232 OF 2019**
KALASH REAL ESTATE
DEVELOPERS, REP. BY ITS
PROP. APPLICANT NO.2 & ANR. APPELLANTS

VERSUS

CAETANINHO DO ROSARIO & ORS. RESPONDENTS

Shri J. P. Mulgaonkar, Senior Advocate with Shri P. Lotlikar, Advocate for the Appellants.

Shri Ashwin Ramani, Advocate for the Respondents No.1 & 2.

AND

MISC. CIVIL APPLICATION NO.988 OF 2019
MAHENDRA SALKAR & ORS. APPLICANTS

VERSUS

CAETANINHO DO ROSARIO & ORS. RESPONDENTS

Shri J.J. Mulgaonkar, Advocate for the Applicants.

Shri Ashwin Ramani, Advocate for the Respondents No.1 & 2.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 6 APRIL 2021

ORAL ORDER:

In a suit for rescission of contract, recovery of possession, and injunction, the respondents as the plaintiffs sought temporary injunction as well. In Special Civil Suit No.8/2016/A, the Civil Judge, Senior Division at Vasco, through order, dated 30/08/2019 (order below exhibit 3), restrained the appellants before this Court from doing the following:

“The application for Temporary Injunction is partly granted with cost.

(a) The defendants no.1 and 2, their agents, servants, any person or persons acting on their behalf are hereby restrained till the disposal of the suit from creating any other third party right, encumbrance and transfer of the said property or the building standing thereon or any portion thereof.

(b) The defendants no.1 and 2, their agents, servants, any person or persons acting on their behalf are hereby restrained till the disposal of the suit from entering into any further agreement for sale of the said property and/or portion thereof and/or of the flats or shop in the said building.

The defendants no.1 and 2, their agents, servants, any person or persons acting on their behalf are hereby restrained till the disposal of the suit from any further interfering in the said property or changing its nature, otherwise then for the purpose of handing over the possession of the said property to the plaintiffs or the defendants no.5 to 12.”

(the order’s format modified)

2. Aggrieved, the appellants have filed this Appeal From Order. As it appears, the respondents no.1 & 2 along with respondents no.3 to 12 contracted with the appellants and allowed them to develop their property. In that process, they also executed irrevocable Power of Attorney. Acting under the agreement and Power of Attorney, the appellants raised structures. When the construction was in progress, a dispute arose between two of the owners, that is respondents no.1 & 2, on the one hand and the developer on the other. So, in the suit for rescission of contract and perpetual injunction, the respondents no.1 & 2 as the plaintiffs also sought temporary injunction. That was granted.

Before this Court in the appeal filed by the developer, 28 persons, who entered into an agreement with the developer before the respondents no.1 & 2 had filed the suit, applied to intervene.

3. Heard Shri J.P. Mulgaonkar, the learned Senior Counsel for the appellants, Shri A. Ramani, the learned counsel for the respondents no.1 & 2, and Shri J.J. Mulgaonkar, the learned counsel for the intervenors.

4. After elaborate arguments, now all parties have agreed that this Court may maintain the order of injunction in part, that is (a) & (b); but the rest of the order shall not stand.

5. Under these circumstances, I dispose of the Misc. Civil Application as follows:

(i) In tune with section 52 of the Transfer of Property Act as held by the trial Court, the directions in clauses (a) & (b) of the order remain unaffected. The last portion of the order stands set aside.

(ii) As to the intervenors, they are free to approach the trial Court and apply to bring themselves on record. All the developments over the property shall be subject to the suit outcome. Given the third-party interests already created, the trial Court may endeavour to dispose of the suit expeditiously in one year.

DAMA SESHADRI NAIDU, J.

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NITI K
HALDANKAR

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