IN THE HIGH COURT OF BOMBAY AT GOA

A. O. NO.11 OF 2020

SHREE MAHADEV DEVASTHAN, THR. ITS ATTORNEY, RAJENDRA PANDHARI SAWANT DESSAI. ……. APPELLANT

VER SU S

GOVIND VISHWANATH SINAI KUNCOLIENKAR AND 13 ORS ….. RESPONDENT

Mr. S. Redkar, Advocate for the Appellant.
Mr. S. Sarmalkar, Advocate for the Respondents.

CORAM: DAMA SESHADRI NAIDU, J.
Date: 7th April, 2021.

ORAL ORDER:

The appellant is the Devasthan. It has filed Special Civil Suit No.09/2017/A before the Civil Judge, Senior Division, Quepem, Goa. That suit for declaration and perpetual injunction is against 14 defendants. In the suit, the appellant-Devasthan also applied for a temporary injunction.

2. Through the order, dated 14/10/2019, the trial Court dismissed the injunction application. It was on the premise that Form III of the Revenue records reflects the names of the respondents nos.1 and 2. The trial Court has reasoned that so long as the Revenue records reflect the names of those respondents, they enjoy a statutory presumption. Aggrieved, the appellant has filed this Appeal From Order.

3. Shri S. Redkar, the learned counsel for the appellant, strenuously contends that initially Form III recorded Devasthan's name as the owner and possessor. Later, on a Sunday, the Revenue authorities mutated the records and incorporated the names of the respondent nos.1 and 2. It was based on the no objection allegedly given by the then Temple's Attorney, an

officer. According to the learned counsel, the Devasthan never authorized that attorney to report no objection for the mutation. It has passed no resolution to that effect. Nor has the attorney placed any written instructions before the Revenue authorities for his reporting no objection.

4. To elaborate, Shri Redkar further submits that despite the appellant bringing to the trial Court's notice all these developments, the trial Court has refused to injunct the respondents from interfering with the appellant's possession and enjoyment, pending the disposal of the suit.

5. Shri S. Sarmalkar, the learned counsel for the respondents, with equal vehemence, opposes the appellant's contentions. According to him, every official act, unless judicially nullified, carries a presumption as to its validity. And on that count, the trial court has correctly ruled that the entries in the Form III raise a statutory presumption in the respondents' favour. He also adds that the respondents nos.1 to 12 were the original respondents. Later, they sold the property to respondent nos.13 and 14, who then partitioned the property and, correspondingly, had the Revenue records mutated. Now Form I and XIV of the Revenue Record reflect the names of the respondents 13 and 14.

6. Heard Mr. S. Redkar, the learned counsel for the appellant, and Mr. S. Sarmalkar, the learned counsel for the respondents.

7. I have inquired with the appellant's counsel whether the Devasthan has taken any steps to question the mutated revenue entries. For it alleges fraud by its official for reporting NOC. In fact, the learned counsel informs me that the Devasthan filed an appeal challenging the mutation. But, later, it did not prosecute that appeal. As a result, the Dy. Collector, as the appellate authority, dismissed the appeal for non-prosecution. It is all the worse for Devasthan to having challenged an order and, then, letting it fail—even by default. Section 114 (e) of the Indian Evidence Act stares at it, to name one statutory instance.

8. Once the challenge to the mutation has failed for whatever reason and so long as the mutated revenue entries remain intact, I find it difficult to

fault the trial Court's view: the presumption must enure to the respondents' benefit. If anybody has to be blamed for this fiasco, it is the appellant itself.

9. Indeed, if it is a problem of many, it is not the concern of any. And the Devasthan's approach to the issue exemplifies this adage.

I, therefore, refuse to interfere with the impugned order. As a result, I dismiss the Appeal From Order.

DAMA SESHADRI NAIDU, J.

AP/-

MARIA AURA PEREIRA
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