

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO.8 OF 2017

WITH

CIVIL APPLICATION NO. 35 OF 2017

LEOCADIA ELIZA D'SOUZA, THR. POA

BY APPELLANT NO. 9 AND 9 ORS.,Appellants.

VS

SANTANA PHILIP PINTO AND 12 ORSRespondents.

Mr. A. Bhobe and Ms. S. Shaikh, Advocates for the appellants.

Mr. R. Rivankar, Advocate for the respondent nos. 8 and 9.

Mr. I. Agha and Mr. K. Morajkar, Advocates for the respondent nos. 10 and 11.

CORAM: G. S. KULKARNI, J.

DATE: 6 DECEMBER 2022.

P.C.:

1. Heard learned Counsel for the parties.
2. This Appeal from Order is filed against an order dated 24 October 2016 passed by the learned Senior Civil Judge, 'A' Court, Bicholim, whereby an application praying for temporary injunction as filed by the appellants/plaintiffs exhibit D-4 came to be rejected.
3. The learned counsel for the appellants at the outset pointed out that in the intervening period there are subsequent developments inasmuch as mutation has been undertaken and according to the

appellants the name of the appellants is recorded in the occupant column. He, therefore, submits that such developments will be pointed out before the trial Court by an appropriate application as may be permissible under Order 39 Rule 4 of the CPC. He would hence submit that his client would now accordingly proceed to file such application. The learned counsel for respondent nos.10 and 11(original defendant nos. 10 and 11) intends to dispute the assertion that would be made by the appellants/plaintiff on the basis of subsequent developments.

4. Be that as it may, all these contentions would be required to be asserted in the fresh application which could be filed by the appellants/plaintiffs.

5. In these circumstances, in my opinion, the appeal ought not to be kept pending and is required to be disposed of with liberty to the appellants to raise all permissible contentions in the fresh application as may be filed under Order 39 Rule 4 of CPC.

6. Needless to observe that all the contentions of the parties on the merits of the pending proceedings are expressly kept open.

7. Let such application be filed as expeditiously as possible. If the

same is filed the learned trial Judge shall consider the same as expeditiously as possible as the suit itself is quite old, and as such gives priority to decide the said application. Parties are not precluded from applying before the trial Court for early disposal of the suit. All parties shall co-operate in the early disposal of the suit.

- 8.** Ordered accordingly.
- 9.** Disposed of in the above terms. No costs.
- 10.** Civil Application No.35 of 2017 application, would also not survive. It is accordingly disposed of. No costs.

G. S. KULKARNI,J.

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