

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.16 OF 2017
WITH
CIVIL APPLICATION NO. 74 OF 2017
IN
APPEAL FROM ORDER NO. 16 OF 2017

ANA RITA ROSALIA SULOCHANA
VAS & 3 OTHERS ... APPELLANTS

Vs.

FRANCISCO ADOLFO ALCANTARA
VAS (SINCE DECEASED), THR. LRS. ... RESPONDENTS

Mr. Ryan Menezes with Mr. Nigel Fernandes and Ms. S. Alvares, Advocates for the Appellants.

Mr. Ashwin D. Bhobe with Ms. S. Shaikh, Advocates for Respondent No. 3.

Ms. Sapna Morderkar, Additional Government Advocate for Respondent Nos. 24 and 25.

CORAM: G. S. KULKARNI, J.

DATED: 7 DECEMBER 2022

ORAL ORDER.

1. I have heard Mr. Menezes, learned Counsel for the appellants, Mr. Bhobe, learned Counsel for respondent no. 3 and

Ms. Mordekar, learned Additional Government Advocate for respondent nos. 24 and 25.

2. This Appeal challenges an order dated 17 January 2017 passed by the learned Adhoc District Judge-1, Fast Track Court, Panaji, Goa, whereby an application for a temporary injunction (Exhibit-8) as filed by the appellants in the suit in question, namely, Civil Suit No. 49/2014, has been rejected. The Appeal was filed on 6 March 2017 and since then, it is pending. It is seen from the record that there is no interim order passed in favour of the appellants.

3. Be that as it may, Mr. Menezes has drawn the Court's attention to the plaint and the averments made in the suit. It is submitted that another suit, namely, Special Civil Suit No. 110/2001/A, filed by appellant no. 1/plaintiff no. 1-Ana Rita Rosalia Sulochana Vas, was decreed by the learned Civil Judge Senior Division, 'A' Court, Mapusa by judgment and order dated 31 March 2009, wherein declaration came to be granted by the following order:

ORDER

(a) The suit filed by the plaintiff stands decreed as prayed for.

(b) It is hereby ordered the power of attorney is a forged document and that the renunciation by Maria de Lourdes da Gama Pinto e Vaz and her husband Francisco Samiro Alcantra de Piedade Vaz is not valid and that the Deed of Partition and Deed of Rectification, Partition and Rectification are null and void and that wills are null and void.

(c) The defendant no. 1 hereby permanently restrained from selling, alienating, mortgaging and/or creating any third party interest or right or parting with the possession of the suit properties.

(d) The counterclaim filed by the defendant no. 6 hereby stands dismissed.

No order as to costs.

Decree shall be drawn up accordingly.

Pronounced in the Open Court.

4. The primary contention of Mr. Menezes is that by virtue of such a declaration, the respondents/defendants are precluded from asserting any rights under the Will dated 20 November 1979 as according to him, there is no question of any lawful bequeath under the Will in question, as the deceased testator had no right to bequeath the property, under the Will in question. It is submitted by Mr. Menezes that although such a case is pleaded in the plaint

separately, however to that effect no case was made out in the application for temporary injunction. It is also his submission that the proceedings arising out of such suit (Special Civil Suit No. 110/2001/A) are now pending in this Court in Second Appeal No. 93/2016. However the fact remains that no application specifically pleading such case has been made before the learned Trial Judge.

5. Mr. Bhobe, learned Counsel for respondent no. 3 on the other hand would support the impugned order. He would submit that there is no error whatsoever in the learned Trial Judge taking the view as the impugned order bears, in rejecting the temporary injunction application.

6. Having heard the learned Counsel for the parties and having perused the record and considering the fact that there was prior adjudication of Special Civil Suit No. 110/2001/A, which according to the appellants/plaintiffs would be relevant and formed the basis for an application for a temporary injunction, in my opinion, it would be appropriate that the appellants/plaintiffs are permitted to raise such plea before the Trial Court by moving a fresh application and by pleading a specific case in that regard. If any such application is made, the same be considered by the

learned Trial Judge on its own merits and in accordance with the law. All contentions are expressly kept open.

7. Needless to observe that such application, if so filed, be decided without being influenced by the observations made in the impugned order.

8. Disposed of in the above terms. No costs.

9. Civil Application No. 74/2017 would also not survive. It is accordingly disposed of.

G. S. KULKARNI, J.

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ESHA SAINATH

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