

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 698 OF 2019

DIANA B. RODRIGUES AND ANR. ...Petitioners
Versus
HARI VAMAN CHATIM AND 5 ORS. ...Respondents

Mr. Shivan Desai, Advocate for the petitioners.

Mr. S. D. Lotlikar, Senior Advocate with Mr. T. Sequeira, Advocate for respondent No.3.

CORAM: M. S. SONAK, J

DATE : 8th June 2022

P.C.:

1. This petition questions the orders dated 22.01.2010 and 02.05.2018, by which the trial Court and the Appellate Court have dismissed the petitioners' application for temporary injunction to restrain the respondents from interfering with the suit property pending disposal of Special Civil Suit No.81/2003/A in the Court of the Civil Judge Senior Division, Mapusa.

2. Mr. Desai, learned counsel for the petitioners submits that both the Courts have erred on principle and therefore, interference is warranted. He submits that the sale deed based on which the defendants claim rights in the suit property was apparently executed based upon a power of attorney. He submits that the power of attorney never authorized the execution of such a sale deed. He

submits that no consideration has been received by the petitioners as agreed. He submits that the respondents were in clear breach of the terms of the agreement. He submits that since all these aspects have not been properly considered, the impugned orders warrant interference.

3. Mr. S. D. Lotlikar, learned Senior Advocate appearing on behalf of the respondents submits that the respondents were placed in possession of the suit property based upon the sale deed. He submits that the two Courts have arrived at a *prima facie* finding that the respondents were bonafide purchasers. He, therefore, submits that this petition may be dismissed.

4. Having considered the rival contentions and perusal of the material on record, I am satisfied that no case has been made out to warrant interference with the impugned orders.

5. In the case of ***Wander Ltd. and Anr. Vs Antox India P. Ltd'***, the Hon'ble Supreme Court has explained the scope of interference against interim orders. The Appellate Court has followed the ratio of this decision and declined to interfere with the order of the trial Court refusing injunction.

6. There is no perversity in the view taken by the trial Court and the Appellate Court. At least *prima facie* since the respondents were

found to be in possession of the suit property, there was no question of grant of temporary injunction in the terms as prayed for.

7. Besides, this is a suit of the year 2003. For the last 19 years, there is no injunction favouring the petitioners. At this stage, therefore, it will not be appropriate to grant any injunction particularly when the suit itself is quite at an advanced stage.

8. Mr. Lotlikar points out that the plaintiffs' evidence is concluded and the matter is now posted for defence evidence. Considering this position, the trial Court is directed to endeavour to dispose of the suit as expeditiously as possible and not later than eight months from today. The parties to cooperate with the trial Court.

9. In disposing of the suit, the trial Court need not be influenced by any of the observations in the impugned orders or for that matter the present order. These observations are only in the context of deciding the application for temporary injunction. The suit will have to be decided on its own merits and in accord with the law by adverting to the evidence that the parties lead before the Court.

10. This petition is accordingly dismissed. However, there shall be no order for costs.

M. S. SONAK, J