

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 291 OF 2022

1. Amin Aziz Jivani, Son of late Aziz Jivani, married, aged about 55 years, Businessman, Citizen of the United States of America, Holder of Overseas Indian Citizen Card No.A839686, Holder of Aadhar Card No. 307443439115; and his wife

2. Minaz Amin Jivani, Wife of Amin Aziz Jivani, Aged about 49 years, Housewife, married, Citizen of the United States of America, Holder of Overseas Indian Citizen Card No.A839687, Holder of Aadhar Card No. 540570725236.

Both of the above permanent residents of Flat No.204, Second Floor, Rijim Classic, Malbhat, Margao-Goa – 403 601. Presently ... Petitioners residing at C-001, Ground Floor, Seacoast Retreat, Pedda Varca, Salcete, South Goa.

Versus

1. Aminmohammed Aziz Jivani, Son of Late Aziz Jivani, aged 60 years, Citizen of the United States of America, Holder of Overseas Citizen Card No. A 1044691, Permanent Resident of C-003, Sea Coast Retreat, Pedda Varca, Salcete, South Goa. Presently residing at Flat No.204, Second Floor, Rijim Classic, Malbhat, Margao, Goa 403601. ajivani@farmersagent.com Mobile No. +1(813) 263-9631

2. Nadia Aminmohammaed Jivani, wife of Aminmohammed Jivani, Medical Practitioner, major of age, Citizen of the United States of America, Permanent Resident of C-003, Sea Coast Retreat, Pedda Varca, Salcete, South Goa. Mobile No. +1 813

7892179 drjivani@me.com

3. M/s. Rijim Builders, A partnership firm duly constituted under the Indian Partnership Act 1932 registered under No. 209, having its office at F.O- 104, First Floor, Rijim Classic, Martires Dias Road, Margao-Goa, 403 601, Through its Partner, Mohammed Akbar Jivani.

4. Mohammed Akbar Jivani, son of Late Mr. Ali Mohammed Jivani, Aged about 69 years, Businessman, resident of 1st Floor, Chrismichelle Building, Pajifond, Margao-Goa, 403 601, Mobile Phone No: +91 9890576780.

5. Sadruddin Aziz Jivani, Son of Late Aziz Jivani, aged about 58 years, Citizen of the United States of Ameirca, Permanent resident of A-201, 2nd Floor, Sea Coast Retreat, Pedda Varca, Salcete, South Goa, Goa. Mobile Phone No. +1 2108721109. ...Respondents

6. B. R. Ravindra, Major of age, resident of Guru Sai Plaza, Margao – Goa.

Mr. Kaif Noorani, Advocate for the Petitioners.
Petitioners Mr. Amin Jivani and Minaz Amin Jivani, present in person.

Mr. John A.Lobo, Advocate for the Respondent No.1.

Mr. A. D. Bhobe, Advocate with Ms. S. Shaikh, Advocate for the Respondent No. 3 and 4.

CORAM: B. P. COLABAWALLA, J
DATED: 15th FEBRUARY 2023

ORAL JUDGMENT

1. Rule. With the consent of the learned Counsel, Rule is made returnable forthwith and heard finally. Learned Counsel appearing for the Respondents, waive service.

2. The above Writ Petition is filed seeking to quash and set aside the impugned Order dated 10.12.2021 passed by the Adhoc-II Additional Civil Judge, Senior Division, South Goa, Margao, Goa, in Special Civil Suit No. 41/2021/II. The impugned Order was passed in Exhibit 4, which was an application seeking interim reliefs under Order XXXIX and Order XL of the Code of Civil Procedure, 1908, (CPC). By the impugned Order, the application seeking interim relief (Exhibit 4) was dismissed by the Trial Court.

3. I have heard the learned Counsel appearing on behalf of the Petitioner as well as on behalf of Respondent No.1, who is the contesting Respondent. On taking instructions, the learned Advocate appearing for Respondent No.1 has stated that Respondent No.1 shall deposit the original Deed of Sale dated 24.08.2021 before the Trial Court at Margao within a period of two weeks from today. He has further stated that the said Title Deed shall be kept in a sealed envelope and in the event the suit is dismissed, the said document ought to be returned back/handed over to the Defendant No.1 and/or

the Advocate of the Defendant No.1. The learned Counsel has further stated, on instructions, that Respondent No.1, pending the above Special Civil Suit, shall not transfer, sell, encumber, part with possession and/or create any third party right, title or interest (including by way of leave and license) in the suit flat.

4. All the aforesaid statements made on behalf of the Respondent No.1, are accepted as undertakings given to the Court. It is directed that in the event the above Suit is dismissed, the document of title deposited before the Court at Margao, shall be returned back to the Defendant No.1 and/or his Advocate after a period of two weeks from the dismissal of the Suit. This, of course, will be subject to any further orders passed by any higher Court.

5. In turn, the Plaintiffs/Petitioners also undertake not to interfere with the suit flat pending the final disposal of Special Civil Suit No.41/2021/II.

6. This Order shall now substitute the Order dated 10.12.2021 passed by the Trial Court and it is this Order that shall continue pending the hearing and final hearing of Special Civil Suit No. 41/2021/II before the Trial Court.

7. Rule is made absolute in the aforesaid terms and the Writ Petition is disposed of in terms thereof. No order as to costs.

8. This Order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J

ANDREZA
PEREIRA

 Digitally signed by ANDREZA
PEREIRA
Date: 2023.02.20 18:43:23 +05'30'