

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.159 OF 2023**

YESHPAL RAIKAR ... Petitioner.
VS
ANTHONY RICHARD FERNANDES REP. BY
POA THOMAS FERNANDES AND ANR. ...Respondents.

Mr. S. M. Walwaikar, Advocate for the Petitioner.
Mr. Y. Nadkarni and Ms. S. Khadilkar, Advocate for the Respondents.

CORAM: M. S. KARNIK, J
DATED: 14th MARCH 2023

P.C.

1. Heard learned counsel.
2. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order dated 11.1.2023 passed by the Civil Judge, Senior Division, Mapusa in Special Civil Suit No.79/2002/A.
3. The petitioner is the original defendant no.4 in the counterclaim. Defendant no.4 filed an application praying for dismissal of the counterclaim/cross suit of the present respondent no.1./plaintiff-Mr. Anthony Richard Fernandes, on the ground that the plaintiff has no locus standi to maintain the counterclaim as the property in question, has been gifted to a third person. The next ground on which defendant no.4 has prayed for dismissal of the

counterclaim is that the purported Gift Deed dated 24.10.1991 has been obtained by playing fraud and the same has been so held by the office of the Collector by order dated 25.6.2021. The learned Counsel for the petitioner submitted that the suit ought to have been dismissed by the trial Court under Section 151 of the CPC. He submits that the Gift Deed on which the counterclaim is filed has already been declared to be a fraudulent document and, therefore, is a nullity. The learned Counsel for the petitioner relied upon various decisions of the Apex Court that have also been referred to by the trial Court, in support of his submission that the person who approaches the Court is required to produce all the documents which are relevant to the litigation and if any vital documents are withheld from the Court in order to gain advantage on the other side, such person would be guilty of playing fraud.

4. Having heard the learned counsel for the petitioner and the learned Counsel for the respondent and perused the impugned order, I do not find this to be a fit case to interfere with the order passed by the trial Court. The trial Court observed that so far as the objection regarding the locus of the plaintiff is concerned, the property has been gifted by the plaintiff subsequent to the filing of the counterclaim. So far as the objection regarding fraud is concerned, the learned trial Court observed that no ground is made out by the petitioner/defendant no.4 by which the present suit can be dismissed.

No doubt, the Collector has made certain observations in the order dated 25.6.2021 as regards the Gift Deed which has been executed on 24.10.1991 in the name of the person who expired 19 years prior to the execution of the Gift Deed. This order of the Collector, as can be seen from the order is in the form of a "Note" and there are certain suggestions made on the basis of which the Collector observed that it is preferred that the matter be referred to the Mamlatdar of the Bardez for restitution of its entry to the original stage. In my *prima facie* opinion, such findings cannot be regarded as conclusive.

5. The present suit was filed in the year 2002. The predecessor in title of the petitioner i.e original plaintiff acquired right in the suit property by virtue of Sale Deed dated 11.1.2000. The plaintiffs sold the suit property to the present petitioner on 7.6.2012. Thus, the petitioner purchased the suit property during the pendency of the suit.

6. So far as the declaration that the Gift Deed dated 24.10.1991 is null and void is concerned, Special Civil Suit No. 79/2002/A was filed by the original plaintiff in December 2002. The counterclaim was filed in 2003 for a declaration that the Sale Deed dated 11.1.2000 in favour of the original plaintiff i.e predecessor of petitioner is null and void. The counterclaim was amended in 2013 for the declaration that the petitioners' sale deed dated 7.6.2012 is null and void. So far as

Special Civil Suit No.79/2002/A is concerned, the same came to be dismissed as withdrawn by the order passed by the trial Court dated 31.7.2012 pursuant to a request made by the original plaintiff. The counterclaim has been proceeding since 2003 which has since been amended in 2013.

7. The counterclaim is at the stage when evidence is being recorded. The petitioner purchased the property during the pendency of the counterclaim. I have gone through the order passed by the trial Court. The trial Court was justified in observing that the counterclaim cannot be dismissed under Section 151 of CPC. Moreover, so far as the contention that the Gift Deed is a fraudulent document which forms the basis for filing the application by the petitioner to dismiss the counterclaim, these are the aspects which are to be gone into by the trial Court at the appropriate stage after evidence is led. So far as alternate prayers (b) and (d) are concerned, the trial Court has made some observations in paragraph 7 of the order which are in fact in favour of the petitioner. At this stage, I see no reason to interfere with the order passed by the trial Court.

8. The petition is rejected.

M. S. KARNIK J.