

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.15/2022

EURICO JOSE DA CONCEICAO
SOUZA EREMITA @ JOSE EURICO
DA CONCEICAO SOUZA
EREMITA AND 3 ORS. ... APPELLANTS

Versus

MARSHALL SOARES AND ANR. ... RESPONDENTS

Mr J. E. Coelho Pereira, Senior Advocate with Mr Vilas Pavithran, Advocate for the Appellants.

CORAM: M. S. SONAK, J.

DATED: 13th OCTOBER 2023

P.C.:

1. Heard Mr Coelho Pereira, learned Senior Advocate who appears along with Mr Vilas Pavithran for the appellants.
2. Though notice was issued to the respondents, the same is yet to be served.
3. Mr Pereira, submits that the relief granted by the Trial Court in the operative portion of the impugned order (at page 31) is too widely worded and such a relief could not have been

granted given the provisions of the Special Relief Act, 1963. Mr Pereira states that the powers under Order 39, Rules 1 and 2 have to be exercised in the context of the provisions of the Special Relief Act, 1963 and not otherwise.

4. Mr Pereira also submits that there are certain observations in the impugned judgment which might prejudice the interests of the appellants at the stage of trial. He submits that such observations were quite unnecessary.

5. Although, the operative portion of the injunction order reflected in para 31 of the impugned order appears to be rather wide, if the impugned order is read in its entirety, all that it says is that the appellants must not, based on the Gift Deed dated 25.11.2013 alienate the property until the disposal of the suit. In the suit, there is a dispute about the Gift Deed dated 25.11.2013. The Trial Court therefore means that until this dispute is sorted out finally, no third party rights or alienations should take place.

6. Insofar as the observations in the order are concerned, it is clarified and even otherwise it is well settled that any observations made at the stage of deciding an application for interim relief, are not to be considered or taken into account at the final hearing stage of the suit. The suit will have to be disposed of by the Trial Court on its own merits and in accordance with law after taking into account the evidence that both parties would choose to lead before it. Accordingly, it is clarified that none of the observations in the impugned order should be considered by the Trial Court at the stage of finally deciding the suit. The suit will have to be

decided based upon its own merits and in accordance with law by evaluating the evidence that the parties choose to lead before the Trial Court.

7. With the above clarifications, this appeal is disposed of. No prejudice will occasion the respondents with the above clarifications because even the respondents are sufficiently protected.

8. The appeal is disposed of in above terms without any order for costs.

M. S. SONAK, J.

SUCHITRA
NANDAN
SINGBAL

Digitally signed by
SUCHITRA NANDAN
SINGBAL
Date: 2023.10.13
15:48:17 +05'30'