

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

**APPEAL FROM ORDER NO.22 OF 2021
WITH
MISC. CIVIL APPLICATION NO.323 OF 2023
AND
CIVIL APPLICATION NO.47 OF 2021
IN
APPEAL FROM ORDER NO.22 OF 2021**

1] MR. AKASH CHAUDHARY,
aged about 30 years, s/o. Anil
Chaudhary, Indian National, r/o.
H. No. 1641, Sector 7, Urban
Estate, Karnal, Rural Part 1,
Karnal, Haryana 132 001.

2]MRS. SEEMA CHAUDHARY,
aged about 52 years, w/o. Anil
Chaudhary, Indian National, r/o.
H. No. 1641, Sector 7, Urban
Estate, Karnal, Rural Part 1,
Karnal, Haryana 132 001,
Duly represented by her lawful
Power of Attorney, Mr. Akash
Chaudhary, aged about 30 years,
s/o. Anil Chaudhary, Indian
National, r/o. H. No. 1641, Sector
7, Urban Estate, Karnal, Rural
Part 1, Karnal, Haryana 132 001
duly authorized by the Petitioner
herein vide the General Power of
Attorney dated 20.10.2021

....APPELLANTS

VERSUS

1]MRS. JOYCE ISABEL PINTO

E D' SOUZA,
D/o. Antonio Francis D'Souza, @
Francisco De D'Souza, aged about
83 years, and her husband,

2]MR. RONALDO PINTO,
s/o. late Louis Pinto, aged about
84 years, Both residents of 85,
Rue Lault, Kirkland, Quebec, Canada,
H9 3x3, Through their duly constituted
Power of Attorney, Mr. Antonio Savio
Da Costa, s/o. Late Mr. Andrian Da Costa,
aged about 71 years, married, service,
R/o. H. No. 28, Costa Wada, Camurlim,
Bardez, Goa 403 507,
Presently residing at 6 Corbna Road,
Hounslow Middlesex, TW3 3AS, U.K.,
by virtue of Power of Attorney dated
09.6.2015, executed before Nigel Philip Watson,
the notary Public of the Province of Ontario
and duly attested/counter signed by attached
Consular High Commission of India, Ottawa.

3]MR. ALCANTRO D'SOUZA @
ALCANTRA THEOPHILLO D'SOUZA,
s/o. Rapheal D'Souza, aged about 61 years,
married, landlord,

4]MRS. JUNE D'SOUZA,
w/o. abovenamed Alcantra
D'Souza, aged about 60 years,
housewife,

5] MR. ARCHIBALD D' SOUZA
@ ARCHIBALD XVIDER D'SOUZA
@ ARCHIBALD XAVIER D'SOUZA,
s/o. Raphael D'Souza, aged about

63 years, married, businessman,

6]MRS. THERAZA D'SOUZA @
THERAZA, w/o. abovenamed Archibald
D'Souza, aged about 58 years, housewife,
both Indian Nationals,

All residents of H. No. 32/2, Pequén,
Duler, Mapusa, Bardez - Goa.

7]MRS. MAXI MEENA D'SOUZA
@ MAXIMINA CANDIDA @
MAXIMINA CANDIDA D'SOUZA
@ MAX D'SOUZA,
D/o. Raphael D'Souza, w/o. late George
D'Souza @ George Peter D'Souza, aged
about 65 years, housewife,

8]MS. TINA D' SOUZA @ TINA
ANTIONETTE, D/o. late George D'Souza
@ George Peter D'Souza, aged about
42 years, unmarried,

9] MS. VERONICA D'SOUZA
@ VERONICA OLIVIA D'SOUZA,
D/o. late George D'Souza, @ George Peter
D'Souza, aged about 31 years, unmarried,

All Indian Nationals, all r/o. H. No. 96,
Durgawado, Duler, Mapusa, Bardez - Goa.

10]MR. ROHAN HARMALKAR,
s/o. Ranganath Harmalkar, aged
about 32 years, married, businessman,
Indian National, r/o. H. No. 412,
Santarbhat, Goltim, Tiswadi, Goa.

11]MR. MATHEW ANTONIO D' SOUZA,

s/o. Antonio Francis D'Souza,
aged about 75 years, unmarried,
service, Indian National,
r/o. Industrial Assurance Building,
2nd Floor, V. N. Road, Churchgate,
Mumbai 400 020.

12]MR. DEVANAND PRABHAKAR KAVLEKAR,
s/o. Prabhakar Kavlekar, aged

about 42 years, unmarried, businessman,
Indian National, r/o. H. No. 324,
Pilerne, Bardez, Goa.

...RESPONDENTS

Mr. Nitin Sardesai, Senior Advocate with Mr. Gaurang Panandikar
and Mr. Kabir Sabnis, Advocates for the Appellants.

Mr. Parag Rao with Mr. Akhil Parrikar and Ms. S. Drago, Advocates
for the Respondent Nos.1 and 2.

CORAM:	BHARAT P. DESHPANDE, J.
RESERVED ON:	19 th October, 2023
PRONOUNCED ON:	02 nd November, 2023

JUDGMENT

1. Admit.
2. Vide order dated 17.12.2021, this Court observed that the matter needs to be decided finally at the admission stage itself and accordingly put parties to the notice.
3. Heard learned Senior Counsel Shri Nitin Sardesai along with Advocate Gaurang Panandikar, Advocate Kabir Sabnis for the

Appellants, Advocate Parag Rao with Advocate A. Parrikar and Ms. S. Drago, Advocate for the Respondents.

4. The challenge before this Court is an order passed below exhibit 4 on 26.07.2021 by the learned Trial Court thereby partly granting Injunction application filed by the Plaintiffs/Respondents thereby restraining the Defendants/Appellants herein from doing any construction in the suit property or from selling, transferring, conveying, assigning suit property and/or creating any third party interest till further orders.

5. The Appellants are the original Defendants whereas Respondents are the original Plaintiffs in the suit filed for Declaration, Injunction and other reliefs. For the sake of convenience, the parties are referred to as Plaintiffs and Defendants as they are arrayed before the Trial Court.

6. The Plaintiffs filed a suit for Declaration, Injunction, cancellation of Sale Deed against the Defendants. The present Appellants are infact Defendant nos. 1 and 2 before the Trial Court. The original Defendant nos. 3 to 9 claimed to be the persons from whom the Defendant nos. 1 and 2 purchased the property. Defendant no. 10 is the so-called Mediator. The Defendant No. 11 earlier purchased the property from Defendant no. 12 and in fact mutated his name in the survey records, however he gave up his right when the Defendant nos. 1 and 2 approached him and showed interest in the suit property.

7. The Plaintiffs claimed that there exists a property in Village Anjuna bearing survey no.444/8 admeasuring 2450 sq. mts. and commonly known as 'Katemunang'. This property is herein after called as suit property.

8. It is the case of the Plaintiffs that suit property was not registered in the Land Registration Office, however, it was surveyed under the old cadastral survey no. 964 and belongs to Francisco de Souza alias Antonio Francis D'Souza and his wife Mrs. Mary Vieira D'Souza, both expired in Canada and survived by the Plaintiffs. The Plaintiff no. 1 is the daughter of said Antonio and Mary.

9. It is further the case of the Plaintiffs that they filed a Civil Suit against one Bhagirathi alias Bhaguem Tukaram Naik in the year 1989 when the said lady claimed Mundkarship right with regard to the house existing in the suit property. The name of Antonio Francis D'souza was recorded in the survey records in the Occupant's Column. Since the Plaintiffs are settled in Cananda, they appointed a Power of Attorney in Goa to look after their properties. That the house existing in the said suit property bearing no. 1552(1) was registered in the name of Francisco de Souza alias Antonio Francis D'Souza and his wife Mrs. Mary Vieira D'Souza. The said house is presently in dilapidated condition and remained unoccupied for long.

10. It is the contention of the Plaintiffs that the Attorney of Plaintiff found the trees from the suit property having been cut and on inquiry it was observed that the Defendant nos. 3 to 9 on the basis of some false Inventory Proceedings included the suit property as the property of their ancestors and thereafter sold it to Defendant nos. 1 and 2 by Sale Deed dated 24.01.2019. Accordingly, the suit is filed for Declaration, Injunction and other reliefs.

11. Plaintiffs also claimed that vide Inventory Proceedings no. 31/1986, the suit property was allotted in the name of Plaintiffs no. 1 and 2 and therefore subsequent Inventory Proceedings filed by Defendant nos. 3 to 9 including the suit property in it cannot be looked into.

12. The Defendant nos. 1 and 2 appeared and contested the suit as

well as injunction application by filing reply, written statement and documents. The learned Trial Court after hearing the parties, passed an impugned order thereby restraining the Defendant nos. 1 and 2 from carrying out any construction and creating any third party interest till the disposal of the suit which is under challenge under the present Appeal.

13. Mr. Sardesai, appearing for the Appellants would submit that Defendant nos. 1 and 2 purchased the suit property by a registered Sale Deed and they are in possession of it from the year 2019. They also obtained necessary permission for cutting the trees, conversion and construction licenses. Defendant nos. 1 and 2 are intending to construct a Hotel and accordingly obtained the necessary permissions.

14. Mr. Sardesai would then submit that Plaintiffs approached the Trial Court claiming title to the suit property through one Francis D'Souza. However, no title documents is placed on record by the Plaintiffs. He submits that the suit filed by the plaintiffs against the so called Mundkar is only to create some right. However, the same will not prove the title of the Plaintiffs. He submitted that the entire proceedings are conducted through Power of Attorney and that the Plaintiffs have agreed that if the Power of Attorney succeeds, the entire property may be given to him. Mr. Sardesai then submits that the Plaintiffs are based in Canada and are not at all interested in coming down to India or to look after the property. However, the present litigation started only at the instance of Power of Attorney holder. Mr. Sardesai would then submit that the Plaintiff who approached the Trial Court claiming title over the suit property must prima facie show the title. Admittedly, there is no inscription/description documents produced by the Plaintiffs. There are no other title documents in favour of Plaintiffs except the so called Inventory Proceedings which admittedly cannot be considered as a title document. Mr. Sardesai would then submit that there is big

question mark as to whether the Plaintiffs are the heirs of Antonio Francis D'souza as death certificate produced on record is only of Francis D'Souza. In the plaint Father's name 'Antonio' is shown without any document, for the first time.

15. Mr. Sardesai would then further submit that admittedly the Defendant nos. 1 and 2 are in possession of the suit property which the Plaintiffs have admitted. The only case made out by the Plaintiffs is with regard to the names in the survey records. However, it is well settled that the survey records are mere Revenue Entries and the same would not prove the title.

16. Mr. Sardesai would then Submit that Defendants 1 and 2 purchased the suit property from Defendants 3 to 9 who inherited the suit property on the basis of Inventory Proceedings upon death of Antonio Francis D'souza and his wife. He would submit that the findings of the learned Trial Court that the Inventory Proceedings of the Plaintiffs being earlier point of time would show some title along with the revenue records are fundamentally wrong.

17. Mr. Sardesai would then submit that since Defendant nos.1 and 2 purchased the suit property by a registered sale deed and even their names are now mutated in the survey records, they are prima facie needs to be considered as owners in possession. He would then submit that Defendant nos.1 and 2 also obtained necessary permissions from the concerned authorities for the purpose of construction of Hotel. If the Defendants are now restrained from carrying out any construction they would suffer irreparable loss which cannot be counted in terms of money. Similarly, he would submit that Defendant nos. 1 and 2 are even ready to undertake that if Plaintiffs succeeds, the suit property along with the constructed structure will be handed over to the Plaintiffs without demanding any cost of such construction. In the alternative Mr. Sardesai would submit that if the

Plaintiffs are ready to deposit in this Court the construction cost of the Hotel till the decision of the suit, he is ready to maintain status quo. He claimed that the cost of the project could be worked out as per the approved plan.

18. Mr. Sardesai finally claimed that the impugned order needs interference as the burden is on the plaintiff to prove better title which they failed to establish and therefore the Defendant nos.1 and 2 are the registered owners cannot be restrained from enjoying the suit property.

19. Per Contra, Shri Parag Rao, learned Counsel for the Plaintiffs claimed that the survey records showing the names of the ancestors of the Plaintiffs is the document on which the Trial Court considered the case in favour of the Plaintiffs though admittedly the Plaintiffs are not in possession of the suit plot. He then would submit that inventory by which the Plaintiffs are claiming right over the suit property is a Judicial Order by which suit property has been allotted to the Plaintiffs. Unless such order is quashed and set aside, there cannot be any objection to such Inventory Proceedings. He would then submit that Defendant nos.3 to 9 who are having no connection with the suit property filed another Inventory Proceedings and got allotted the suit plot in their name, even though earlier Inventory Proceedings were decided in the favour of Plaintiffs. He then claimed that the Plaintiffs though residing in Canada were vigilant with their rights and possession and accordingly they filed proceedings against the lady by name Bhagirathi and who was trying to claim mundkarship rights over house existing in the suit property.

20. Mr. Rao would then submit that such suit filed by the Plaintiff against Bhagirathi was decreed and even the suit filed by the Plaintiffs against present Defendant nos.11 and 12 for quashing the Sale Deed by which they were claiming rights over the suit property is also

decreed.

21. Mr. Rao claimed that though the Plaintiffs are not in physical possession of the suit property, showed their right by way of survey records and the Inventory Proceedings as well as proceedings filed against different persons. As against this, Defendant nos.3 to 9 did not act for protecting their so called title or possession and infact filed false Inventory Proceedings. He therefore would submit that both the parties failed to show title for the suit property, however the Trial Court has rightly considered to grant injunction partly to prevent the nature of the property being changed till the disposal of the suit.

22. Rival contentions fall for determination.

23. The survey records of survey no. 444/8 of Anjuna Village was originally showing the name of Antonio Francis D'Souza as the occupant. There is no name either in the tenant's column or the other rights column. Subsequently, the name of Devanand Prabhakar Kavlekar found recorded in the name of occupant's column along with the name of Antonio Francis D'Souza vide some mutation no. 16. The old cadastral plan no. 946 shows some structure which is at present in dilapidated condition. The plaintiffs have produced translation from the Directorate of Land Survey of the State of India vide serial no. 946 dated 06.08.1918 The translation of this document shows that on 15.02.1943 at the site of the property known as 'Cante Munonga' belonging to Francisco D'Souza who is away, was carried out and accordingly the plan was prepared. The Plaintiffs also produced death certificate from Lakeshore General Hospital dated 22.06.1982 showing that Mr. Francis D'Souza age 86 years expired in the Hospital on 24.04.1982. Similarly wife of said Francis D'Souza by name Mary Vieira D'Souza expired in Canada on 20.10.1997. There is receipt of Village Panchayat Anjuna dated 22.08.1997 in the name of Antonio Francis D'souza, showing house tax in respect of House

no. 1552/1. Similarly, there are other receipts of House Tax paid in the name of Antonio Francis D'souza regarding House no. 1552/1 from 2013 till 2021.

24. Inventory Proceedings no. 31/1986 were filed before Mapusa Court by Ms. Mary Nativiti De Souza resident of Canada wherein the Inventariante (deceased) was shown as Antonio Francis D'souza from Anjuna Bardez, Goa. In this Inventory Proceedings it has been disclosed that Shri Antonio Francisco de Souza married to Mrs. Mary however, died on 24.04.1982 in Canada without any will/Gift, leaving behind the widow as half sharer of his assets and heir as his only daughter namely Joyce Isabel Pinto married to Reynold Joseph Pinto both residents of Cananda (Plaintiffs). In this proceedings item no. 1 is described as a property known as 'Katemunang' with existing dwelling house situated at Anjuna bearing survey no. 444/8. In this Inventory Proceedings the said house and the property is allotted to Mary and Joyce in equal share.

25. The plaint itself admit that the suit property was not registered or recoded in the land registration office, however it was surveyed under old cadastral no. 964.

26. Thus the Plaintiffs are claiming right over the suit property only on the basis of survey records and Inventory Proceedings of the year 1986. Similarly, it is the contention of the Plaintiffs that they were in possession of it and accordingly proceedings were filed against Bhagirathi and others. However, admittedly the Plaintiffs are not in physical possession of the suit property at the time of filing of the suit which they admitted before the Trial Court. Therefore, they claimed the relief of injunction the Defendant nos.1 and 2 from carrying out construction and from creating any third party interest.

27. As against this, Defendant nos.1 and 2 claimed that they purchased the suit property from Defendant nos.3 to 9 in the year

2019. It is their contention that suit property was allotted to Defendant nos.3 to 9 on the basis of Inventory Proceedings no. 17/2018 filed in the Court of Bicholim.

28. The document of such Inventory Proceedings shows the name of the estate leaver as late Shri Antonio Joan Francisco D'souza and his wife Late Smt. Ana Zabelina Antonio D'Souza from Duler, Mapusa-Goa. The entire Inventory Proceeding is not produced except the Final Order dated 26.12.2018 which did not disclose the relevant details.

29. The Inventory Proceedings no. 17/2018 shows the name of the deceased person/estate leaver as Antonio Joan Francisco D'souza and his wife Late Smt. Ana Zebelina Antonio De Souza, whereas the Plaintiffs are claiming rights through Mr. Antonio Francis D'souza and his wife Mrs. Mary Vieira D'Souza who both expired in Canada.

30. The Plaintiffs defended the suit filed by Smt. Bhagirathi alias Bhaguem Tukaram Naik before the Mamlatdar in the year 1981. The said Bhagirathi alias Bhaguem claimed that she is the Mundkar of the house existing in the suit property belonging to the Plaintiffs. The Plaintiffs defended the said suit/application for registration of Mundkars which was rejected. Similarly the plaintiffs filed another proceeding against Mr. Mathew Antonio D'Souza and Mr. Devanand Prabhakar Kavlekar who are Defendant nos. 11 and 12 in the suit. The said suit was filed in the year 2018 at Mapusa Court thereby challenging the Succession Deed dated 21.01.2014 and the Sale Deed dated 17.01.2014 as null and void.

31. Mr Rao has now produced Judgment passed by Mapusa Court in Special Civil Suit no. 109/2018 against said Mathew D'Souza and Devanand Kavlekar vide Judgment dated 28.06.2023 thereby decreeing the said suit and accordingly declaring the Deed of Succession dated 21.01.2014 and the sale Deed dated 17.02.2014 as

null and void.

32. It is necessary to note here that the claims raised by Defendant no. 12 over the suit property is based on the Deed of Succession which has been now declared as null and void. Similarly, Inventory proceedings of 2018 gives different names of the deceased persons.

33. It is also required to be noted here that the Sale Deed in question which is challenged here in the present suit clearly refers to Inventory Proceedings filed in the year 2018, however, there is no reference to any title documents.

34. The sum and substance is that neither the Plaintiffs nor the Defendant nos.3 to 9 produced title documents of their ancestors showing rights over suit property. However, the Plaintiffs by producing the survey records and also protecting their right over suit property in earlier litigation filed by Mrs. Bhagirathi alias Bhaguem and thereafter the suit filed by them against present Defendant nos.11 and 12, prima facie show that they have some interest in the suit property. The learned Trial Court admittedly found that possession of the suit property is with the Defendants. However, the learned Trial Court also found that the Inventory Proceedings filed by the Plaintiffs and more specifically filed by Mrs. Mary D'Souza i.e. wife of Antonio Francis D'souza in the year 1986 itself shows some connection of the Plaintiffs with the suit property. Therefore the learned Trial Court observed that arguable point has been raised which in the matter to be decided on merit and till that time status of the property should be maintained.

35. Mr. Rao while placing reliance in the case of **Maharwal Khewaji Trust (Regd.), Faridkot Versus Baldev Das** reported in **2004(8) SCC 488** claimed that the status quo needs to be maintained as directed by the Trial Court and no case is made out for interference. He submits that if the nature of property is changed by

permitting the Defendant nos.1 and 2 and constructing the hotel, it would be difficult to restore it back to the present status. While relying upon another decision in the case of **Anand Prasad Agarwalla Versus Tarkeshwar Prasad and others** reported in 2001 (5) SCC 568, Mr. Rao would submit that the Court should not hold a mini trial at this stage to find out the title as such aspect has to be decided on producing evidence.

36. Mr. Rao while placing reliance in the case of **Smt. Hirabai P. Kamat Mhamai & ors. Versus Yeshwant Sakhalkar** reported in 2003 (1) Goa L.T. 352 claimed that when the Trial Court has considered the matter, this Court should not interfere unless observation are wholly perverse warranting interference.

37. Mr. Sardesai while placing reliance in the case of **Ramchandra Sakham Mahajan Versus Damodar Trimbak Tanksale** reported in 2007 (6)SCC 737 claimed that the burden is on the Plaintiff to establish title. According to him the Plaintiff miserably failed to prove title and therefore the Order of Injunction though partly granted is on perverse findings.

38. In the above decision the Apex Court considered in para 13 that burden is on the Plaintiffs to establish the title, however while appreciating the case of title set up by the Plaintiff the Court is also entitled to consider rival title set up by the Defendants. But the weakness of the defence or the failure of the defence to establish the title set up by them would not enable the Plaintiff to a decree. There is absolutely no dispute or quarrel with the above proposition. However, while grant or refusal of Temporary Injunction under Order XXXIX Rule 1 and 2 and as discussed in the case of **Hirabai P. Kamat Mhamai (Supra)**, the Court has to consider the document produced by the parties as it is. If the documents produced by the Defendants as against the Plaintiffs are not prima facie displacing the case put

forth by the Plaintiffs, the Court has to presume prima facie case made out in favour of the Plaintiffs on the basis of such documents. If after perusal of documents, the Court finds that either two views are possible or the view propounded by the party producing documents cannot be substantiated without leading evidence, the said documents cannot be said to have displaced prima facie case. The balance of convenience is also required to be looked into along with the aspect of irreparable loss.

39. In the case of **Maharwal Khewaji Trust(Supra)** the Apex Court has observed that generally during the pendency of litigation Court protects status quo existing on the date of suit and it is only in exceptional circumstances where irreparable damage is feared, the Court permits change of status quo.

40. Mr. Rao also placed reliance on the decision of **Wander Ltd. Versus Antox India P. Ltd.** reported in **1990 (Supp) Supreme Court Cases 727**, to buttress his submission that powers of this Court while hearing an Appeal are limited and that even if another view is possible, the same cannot be replaced specifically when the view of the Trial Court is without any infirmity or illegality. The discretion exercised by Trial Court must be shown to have exercised arbitrarily or capriciously or perversely or by ignoring settled principles of law, while granting or refusing interlocutory injunction.

41. Keeping in view the above settled proposition of law and applying to the matter in hand, one thing is clear that both the parties failed to produce any document of title qua the suit property. Plaintiffs specifically claimed that the suit property is not registered in the Land Registration Office, however claimed that it was recorded under the old cadastral survey. The inventory filed by the Plaintiffs is at the first point of time as compared to the inventory filed by Defendant nos.3 to 9. Similarly the name of the person recorded in

the survey records is Antonio Francis D'souza is reflected in the Inventory Proceedings filed by the Plaintiffs. The mundkarial dispute in the year 1981 filed by Mrs. Bhagirathi Naik against the Plaintiffs and late Mrs. Mary D'Souza was successfully defended by the Plaintiffs. The contention of Mr. Sardesai that this litigation was created only to show some right and with the connivance of the so called Mundkar. At this stage, such contention on the part of Appellant/Defendants nos.1 and 2 cannot be entertained for the simple reason that this adjudication of a dispute raised by Mrs. Bhagirathi Naik was in the year 1989 whereas inventory was filed in 1986. Such Judicial Order cannot be simply claimed to be a fabricated document and that too on the basis of oral submissions.

42. Secondly, Plaintiffs filed a suit for declaration of Sale Deed as null and void against Defendant nos.11 and 12 in the year 2018. This fact is also admitted by Defendant nos.1 and 2. The transaction entered between Defendant nos. 11 and 12 on one part and Defendant nos. 3 and 9 on the other part is also not disputed by Defendant nos. 1 and 2. The fact that though suit property was purchased by Defendant no.12 by a registered sale deed from Defendant nos.3 to 9, is also not disputed by Defendant nos.1 and 2. Such sale deed dated 17.02.2014 along with the Deed of Succession was challenged by the Plaintiffs in Special Civil Suit no. 109/2018 which has been decreed on 28.06.2023. Defendant no.11 that is Mathew Antonio D'souza claimed to be the owner of the suit property by way of Succession Deed and accordingly he sold the property to Defendant no. 12 for an amount of Rs.91 lakhs. It is surprising that Defendant no. 12 simply gave no objection in favour of Defendant nos. 1 and 2 while executing Sale Deed on 24.01.2019, without seeking cancellation of sale deed and demanding sale consideration by which he allegedly purchased suit property from Defendant no. 11.

43. As against this the documents produced by Defendant nos.1 and 2 and more specifically the inventory by which Defendant nos.3 to 9 claimed to have acquired rights to the suit property, prima facie show different names of the parties and more specifically the rights of the original owner.

44. Even the name of Antonio Francis D'souza as appearing in form I and XIV at the initial stage is not found in the Inventory proceedings but a different name is recorded of the Estate Leaver i.e Antonio Joan Francisco D'Souza alias Francisco D'souza and his wife Ana Zabelina D'Souza.

45. The Plaintiffs claimed that their ancestors were Mr. Antonio Francis D'souza and his wife Mr. Mary Nativiti Dsouza. These names are reflected in the Inventory Proceedings no. 31/1986. Admittedly such Inventory Proceedings decided by Mapusa Court on 18.02.1987 are not set aside till date. The Inventory Proceedings filed by Defendant nos.3 to 9 at Bicholim Court were only in the year 2018 by Special Inventory Proceeding no. 17/2018. The learned Trial Court therefore rightly observed that the documents placed by the Plaintiffs and steps taken by them to protect the suit property would show prima facie some rights over the suit property as compared to the documents placed by the Defendants. Such findings of the Trial Court are clearly based on appreciating the documents and comparing it to find out prima facie case. It is clear from the records that the property in question was earlier found recorded in the name of Antonio Francisco D'Souza in the survey records through whom the Plaintiffs are claiming rights over the said property. Such findings cannot be considered as perverse or arbitrary for the simple reason that both parties failed to prove title on the suit property even at prima facie stage, but the documents of the Plaintiffs show some rights accruing in favour of the plaintiffs qua the suit property. These documents are required to be tested during evidence.

46. No doubt Defendant nos. 1 and 2 are now in possession of the suit property, however if they are not restrained as ordered by the Trial Court there is every possibility of changing the nature of the suit property during pendency of the suit. Defendant nos. 1 and 2, admittedly, are trying to construct a Hotel thereby changing the present status quo which will cause irreparable loss and injury to the Plaintiffs if they succeed in proving their right over the suit property. As compared to it, the proposed plan of construction of the Hotel would not cause any irreparable injury as the Defendants could very well be compensated in terms of money.

47. As held by the Apex Court in the case of **Maharwal Khewaji Trustji Trust (supra)**, maintaining status quo is the need till disposal of the suit, which has been rightly appreciated by the Trial Court.

48. The submissions of Mr Sardesai that the Plaintiffs to be directed to deposit the cost of the project or the Defendant Nos.1 and 2 to be permitted to construct the Hotel and on succeeding in the suit the Plaintiffs will be entitled to suit property along with the hotel without any extra cost, are no doubt, innovative. However while granting or refusing injunction and that too at this stage, could be considered only with the consent of the parties and not by a Judicial Order.

49. At the most the suit could be expedited.

50. The impugned order, therefore, suffers from no perversity, illegality or otherwise so as to interfere with it in this Appeal. Accordingly, the Appeal fails. Hence the following order.

ORDER

- (i) The appeal stands rejected.
- (ii) Parties shall bear their own cost.
- (iii) The learned Trial Court is directed to decide the suit as

expeditiously as possible.

(iv) Miscellaneous applications are also disposed of.

BHARAT P. DESHPANDE, J.