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IN THE HIGH COURT OF BOMBAY AT GOA

**APPEAL FROM ORDER NO.4 OF 2020
WITH
CIVIL APPLICATION NO.4 OF 2020**

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MADHURA MADHUKAR GOVEKAR AND 5

ORS.,

... APPELLANTS

Versus

NARAYAN BHAGWANT GOVEKAR, REP. BY

THEIR ATT., BHAGWANT GOVEKAR AND 5

ORS.,

... RESPONDENTS

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Mr. Preetam Talaulikar, Advocate for the Appellants.

CORAM:- VALMIKI SA MENEZES, J.

DATED :- 4th January, 2024

P. C.:

1. This is an appeal impugning order dated 13/11/2019 passed by the Civil Judge Senior Division at Mapusa on Exhibit D-2, an application for temporary injunction filed by the Respondents / original Plaintiffs in Regular Civil Suit No. 79/2019/A. By the impugned order, the Trial Court has restrained the Defendants /

Appellants herein from selling the suit property bearing Survey No. 8/3, 10/12, and 81/18 of village Pilerne.

2. The plaint is founded upon allegations that Defendant No. 2 fraudulently took Thumb Impressions of the Plaintiff No. 1 on certain documents, on the basis of which he got a Sale Deed dated 18/08/1995 executed, purporting to sell the suit property. The suit seeks a declaration that the Deed of Sale dated 17/08/1995 was ab initio void and a nullity. Along with this plaint, an application for temporary injunction at Exhibit D-2 on the file of the Trial Court was filed, seeking an order of restraint against the Defendants from transferring or creating any third party right over the suit property, pending disposal of the suit.

3. The application for temporary injunction was opposed by the Defendants by filing reply wherein they have denied these contentions and claim that the Plaintiffs have received their share of the sale consideration and executed a Deed of Sale putting the Defendant Nos. 1 to 6 in physical possession of the suit property along with the house existing thereon.

4. On perusal of the impugned order, the Trial Court has in great detail considered the rival contentions and has arrived at the

conclusion that in the circumstances of the case, since the Defendants are in possession of the property, pursuant to the execution of the Sale Deed, and on weighing conflicting probabilities, the Defendants should be restrained from parting with the possession of the property or creating third party right thereon. The Trial Court has also concluded that the allegation of fraud would require to be tested in a trial. However, it concluded that in the meantime, the Defendants should be restrained from alienating the suit property. It was also held by the Trial Court that hardship and inconvenience caused to the Plaintiffs would be greater than the one which is likely to be caused to the Defendants. In that view of the matter, the Trial Court issued the restraining order.

5. After Considering the record, and the reasoning of the Trial Court in the impugned order, I found no infirmity was committed while passing the impugned order. The other is well reasoned and takes a plausible view on the material on record. In any event, considering line of the reasoning adopted by the Trial Court, even if another view was possible, the provisions of Order 43 Rule 1 CPC mandates that an Appellate Court ought not to substitute this discretion, unless the same is exercised in a manner which is perverse, capricious or in contravention of a set principal of law. Such is not the case in the present matter.

6. Under such circumstances, I am of the view that the impugned order does not call for any interference and accordingly the appeal is dismissed with no order as to cost.

VALMIKI SA MENEZES, J.