

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

**SECOND APPEAL NO.31 OF 2023
WITH
CIVIL APPLICATION NO.47 OF 2023**

SECOND APPEAL NO.31 OF 2023
BERNADINA VIEGAS AND ANR ... APPELLANT
Versus
MARSY SABINA DCOSTA @ VIEGAS AND
12 ORS ... RESPONDENT

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BERNADINA VIEGAS AND ANR ... APPLICANT
Versus
MARSY SABINA DCOSTA @ VIEGAS AND
12 ORS ... RESPONDENT

Mr. Chaitanya Padgaonkar, Advocate with Ms. V. Mahato, Advocate
for the Appellants.
Ms. Analiz Menezes, Advocate for Respondent Nos. 1 and 2.

CORAM:- M. S. SONAK, J.

DATED :- 23rd February, 2024

P.C.

Heard Mr. Padgaonkar, learned Counsel, who appears for the
Appellants and Ms. Analiz Menezes, learned Counsel for the
Respondent No.1.

2. The Appellants are the original defendants and the first Respondent
was the original Plaintiff in Regular Civil Suit No. 344/2011/E. This

suit was dismissed by the Trial Court. However, by Judgment and Decree dated 04.12.2021, the Appeal Court has reversed the Trial Court's Decree and directed the Appellants to demolish the ground plus one structure put up by them in the suit property.

3. The Appellant no.2 and the first Respondent are siblings. The Appellants rely on a Gift Deed in respect of the suit plot. The First Appellate Court has held that such Gift Deed would not be valid without consent or ratification of the first Respondent. This is based on the principle that under Article 2177 of the Portuguese Civil Code, no party has a right to gift specific portion of a common property by way of a Gift unless the same was duly partitioned and allotted to the owner.

4. A Mediation was attempted but the same has failed. There is record that there were two similar Gift Deeds made by the Appellants and the remaining siblings favouring two other brothers of the second Appellant. Admittedly, the first Respondent did not challenge these two Gift Deeds.

5. The ground plus one structure put up by the Appellants has three shops on the ground floor and the residential quarters on the first floor.

A suggestion was made about giving one of these shops to the first Respondent. However, Mr. Padgaonkar, on instructions, stated that the relationship between the parties is quite strained and such an

allotment would only increase the strain.

6. To the Court's query as to what would be the value of one of the shops, Mr. Padgaonkar stated that the shops admeasure approximately 20 square metres and the plot where the structure is put up is in St. Jose de Areal at Margao, Goa. Therefore, even on a conservative estimate, the value of the shop would have to be determined at the rate of Rs. 1 Lakh per square metre. Accordingly, a case is made out for admission of the Second Appeal and grant of interim reliefs, subject to the Appellants depositing in this Court, an amount of Rs. 20 Lakhs corresponding to the approximate value of one of the shops.

7. The Second Appeal is accordingly admitted on the following substantial questions of law :

(a) Whether on a proper interpretation of Article 2177 of the Portuguese Civil Code, 1867, a Decree could have been made for demolition of the structure put up by the Appellants, who are admittedly, the co-owners of the suit property ?

(b) Whether the First Appellate Court completely failed to take into account the equitable considerations, if any, that arise in the matter ?

8. Ms. Menezes, learned Counsel, waives service on behalf of the

first Respondent after admission of the Second Appeal.

9. Mr. Padgaonkar states that steps would be taken to serve the unserved Respondents within four weeks from today.

10. Insofar as interim relief is concerned, the same will have to be granted as otherwise, the Appellants' ground plus one structure, would have to be pulled up in execution.

11. Accordingly, the execution of the impugned Judgment and Decree dated 04.12.2021 is stayed subject to the Appellants depositing in this Court an amount of Rs. 20 Lakhs within eight weeks from today.

12. The amount should be deposited with necessary intimation to the learned Counsel for the first Respondent. If the amount is not deposited, then the prayer for interim relief shall be deemed to have been rejected and the interim relief made today shall be deemed to have been vacated without any further reference to the Court. The Registry to invest the amount in a Nationalised Bank.

13. In case the parties decide to settle the matter, liberty to apply for disposal of this Appeal.

14. Civil Application No. 47 of 2023, stands disposed of.

M. S. SONAK, J.

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