



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.523 OF 2023

SILVESTINA DIAS E VAZE @ CELESTINA
OR SILVESRING DIAS E VAZE ... PETITIONER

Versus

DATTA VISHNU DESSAI AND ANR ... RESPONDENTS

Mr. J. Godinho, Advocate for the Petitioner.

CORAM:- VALMIKI MENEZES, J.
DATED :- 17th January, 2025

P.C.:

1. This is a petition under Article 227 of the Constitution of India assailing the judgment and order dated 06/04/2022 passed by the District Court in an appeal from an Order challenging the grant of a temporary injunction by the Civil Court by an order dated 07/02/2020.

2. Regular Civil Suit No.19/2019/C came to be filed by the Respondents/Original Plaintiffs for reliefs, *inter alia*, for specific performance of an agreement dated 04/01/2016 and for a permanent injunction against all the Defendants, one of whom, Defendant No.2 is the Petitioner herein. An order of temporary injunction was also sought against the Defendants which was ultimately granted by order dated 07/02/2020, to the

extent that it restrained the Defendants, including this Petitioner from alienating the suit property and granting third party rights thereon. This order was challenged in appeal before the District Court in Misc. Civil Appeal No.21/2020 which was ultimately dismissed on 06/04/2022. The present petition has been pending in this Court since then, while the trial in the suit has commenced and the evidence of the Plaintiff is underway.

3. The main contention raised in this petition as argued by the learned Advocate Shri J. Godinho for the Petitioner is that the trial Court has totally ignored the fact that Defendant No.2/Petitioner herein had revoked the Power of Attorney executed by her on 07/10/2006 on the basis of which the Agreement dated 04/01/2016 was executed. It is the contention of the Petitioner that this Power of Attorney was in fact revoked on 29/12/2015 and hence the Agreement which was executed on the strength of the revoked Power of Attorney itself was in question.

Though reliance is now to be placed in this petition on a copy of the revocation document dated 29/12/2015, it is a matter of record that this document was not placed before the Civil Court whilst deciding the application for a temporary injunction nor before the Appellate Court and has been for the first time, relied upon it before this Court in the present petition. This is an impermissible exercise by the Petitioner and

he ought to have attempted to produce the document in terms of the provisions of the Civil Procedure Code before the trial Court. No submission is made or any averment is made in the petition as to whether any attempt is being made to rely on this document before the trial Court or to amend the pleadings and defence before that Court. Considering this position, it would be impermissible for me to even consider the contents of this document when the same is not a part of the record of the trial Court.

4. On going through the order passed by the trial Court granting a temporary injunction, detailed findings have been arrived at even on the question of revocation of the Power of Attorney, wherein the Court concludes that Defendant No.2 has not produced on record the document of revocation or any document to show that the amount has been repaid to the Plaintiff and the entire material before the trial Court has been considered and findings arrived at in the order granting temporary injunction by no means to be considered perverse or contrary to Rule of law.

5. The appellate Court has in fact re-appreciated all the material before the trial Court and has dismissed the appeal by confirming the findings arrived at *prima facie* by the Court. There is thus no room for reconsidering the orders passed by both, the trial Court and appellate Court in supervisory

jurisdiction of this Court under Article 227 of the Constitution of India. Consequently, the petition is rejected with no order as to costs.

VALMIKI MENEZES, J.