



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.179 OF 2024

GOKUKA BABSO @ FOTU
@ BABUSSO @ BAPUSO
FADTE OR PHADTE

... PETITIONER

Versus

MAHENDRA TUKARAM
HALARNKAR

... RESPONDENT

Mr. S. M. Singbal, Advocate for the Petitioner.

Mr. S. D. Lotlikar, Senior Advocate with Ms. Sailee Kenny and Ms. Neha Shirgaonkar, Advocates for the Respondent.

CORAM:- VALMIKI MENEZES, J.

DATED :- 5th FEBRUARY, 2025.

ORAL ORDER:

1. This petition impugns order dated 03.11.2023, passed by the District Judge-1, North Goa at Mapusa in Miscellaneous Civil Application No. 54/2019.

2. By the impugned order the District Court, in exercise of its jurisdiction under Order 43 Rule 1 of the Code of Civil Procedure, 01908(CPC) has reversed the order dated 24.05.2019 of the Civil Judge Junior Division, 'B' Court, Bicholim, passed on an application for

temporary injunction at Exhibit D-3 of its file, refusing to grant the Plaintiff/Respondent herein an order of temporary injunction.

3. The facts required to be referred to for the decision of this petition are as under:

- (a) The Petitioner, who is the Defendant in Regular Civil Suit No. 75/2005/B, had filed a suit for permanent injunction against the Plaintiffs/Respondent herein way back in the year 2005. In that suit (Regular Civil Suit No. 75/2005/B), the Petitioners sought a Decree to declare that a Gift Deed dated 01.09.1997, executed by Ms. Meera Babuso Fadte(who the Petitioner claims is his mother), in favour of the Plaintiffs in this suit was Null and Void. Amongst other issues, issue No. 3 in that suit came to be framed as to whether the present Petitioner was in possession of the suit property which was described as a land under Survey No.10/20 of village Bicholim admeasuring an area of 345 Sq. mts. with a house standing thereon bearing House No. 2066. Whilst dismissing the Petitioner's suit, Issue No.3 was answered against the Petitioner holding that the Petitioner was not in possession of both, the suit property/Survey No. 10/20 and of the house bearing No.2066.

- (b) The Decree dated 11.09.2012 passed in Regular Civil Suit No.75/2005/B, was assailed in Appeal before the District Court, which by its Judgment and Decree dated 25.04.2014 has confirmed the findings of the Civil Court and has upheld the Decree dismissing the Petitioner's suit that Decree has attained finality.

Though, Execution proceedings were not maintainable, at the behest of the Plaintiffs in the present suit, they filed such Execution proceedings purporting to execute the Decree dismissing the Petitioner's suit. Ultimately, these proceedings were dismissed by the Executing Court as being not maintainable. In the meantime, a criminal case at the behest of the Plaintiffs alleging trespass by the Petitioner in the house standing on the suit property came to be filed on 19.09.2009, in which the Petitioner was ultimately acquitted on 20.05.2011.

- (c) The present suit i.e. Regular Civil Suit No. 67/2018/B came to be instituted by the Respondent/original Plaintiff claiming a Decree of permanent injunction against the Petitioner with respect to the very same suit property bearing Survey No.10/2 and house standing thereon bearing No. 2066. In that suit, an application for a temporary

injunction under Exhibit D-3 came to be filed, which was dismissed by the Trial Court holding that the Petitioner was in settled possession of the suit property and the house therein. The findings of the Trial Court appear to be based upon the documents produced by the Petitioner being the Water Bills and Electricity Bills of the year 2010, a Construction licence issued in his name dated 31.06.2018, and the Judgment dated 20.05.2011 in the criminal case. These findings are given notwithstanding of the specific findings on issue No.3 in the Petitioners earlier suit that he was not in possession of the suit property and the house.

- (d) The Appellate Court in exercise of its jurisdiction under Order 43 has reversed these findings holding the same to be perverse and contrary to the records of the earlier proceedings.

4. Learned Advocate Mr. S. M. Singbal appearing for the Petitioner has advanced the following submissions:

- (i) That the Appellate Court has exercised jurisdiction in excess of powers vested in it under Order 43 Rule 1 CPC. He submits that the findings in favour of the Petitioner arrived at by the Trial Court on possession based upon the documents produced before the Trial Court were based on the record and the view take by the Trial Court

did not call for interference in the Appellate Courts limited jurisdiction. He submits that since the view taken by the Trial Court was plausible view, the Appellate Court has acted in excess of jurisdiction conferred upon it.

(ii) He submits that the documents held in the name of the Petitioner i.e. Water Bills, Electricity Bills and the Construction licence are all of the year 2010 till 2018, supporting the case of the Petitioner of being in settled possession of the property. Reliance has been placed on *Rame Gowda v/s M. Varadappa Naidu & ors, (2004) 1 SCC 769*.

Learned Senior Advocate for the Respondent in contrast supports the impugned order passed by the District Court.

5. The averments made by the Petitioner in Regular Civil Suit No. 75/2005/B, wherein the Petitioner sought a Decree for a declaration that the Deed of Gift by Meera Fadte in favour of the present Plaintiff as being Null and Void and that the Petitioner along with his siblings and his father averred that they were in possession of the suit property/house since, they were residing there with its owner Ms. Meera Fadte, who had purchased the property by Deed of Sale dated 27.03.1986. The Judgment passed by the Trial Court in that suit specifically struck two issues, the first being whether the Plaintiff No. 1 proved that he was the husband of Ms. Meera Fadte, and the Petitioner and his siblings were her children.

The second issue was whether they prove that they were in exclusive possession of the suit property and suit house (the subject matter in the present suit). After considering the evidence led by the Petitioner in that suit, the Trial Court therein had specifically arrived at the conclusion on issue No. 1 that the Petitioner and the other Defendants had failed to prove that they were husband/children of Ms. Meera Fadte; on issue No. 3 which relates to whether the Plaintiffs prove that they were in possession of the suit property and the house, the Trial court had returned the findings that the Plaintiffs were not in possession of both the suit property and the suit house. These findings have been confirmed in Appeal and have attained finality.

6. The findings given by the Trial Court at the prima facie stage, that the Petitioner was in settled possession of the house was on the basis of documents such as Water Bills, Electricity Bills and a Construction licence, two of these documents relate to the year 2010, and were available to the Petitioner during the course of earlier proceedings, but were not produced in evidence. The Appellate Court on considering these documents, arrived at a specific finding and rightly so that the Petitioners were not in possession. The Plaintiff in the present suit has a Gift Deed of the year 1997, which is prima facie evidence of their title of and their possession of the suit property and the suit house bearing No.2066. In addition, specific findings have been given by the Civil Court in earlier proceedings that the Petitioner nor his father and his

siblings were husband/ children of Ms. Meera Fadte nor were they in possession of the suit property and the suit house. The Deed of Gift in favour of the Plaintiffs would no doubt be at the prima facie stage, proof of possession. Plaintiffs have made out the case for the grant of temporary injunction as prayed for at Exhibit D-3 before the Trial Court.

7. The Judgment in Regular Civil Suit No. 75/2005/B was rendered after evidence was recorded by the Trial Court and a Decree had been passed in that proceeding. The Judgment decides as to who was in possession, after considering evidence of the parties in the suit. In my considered opinion the ratio of that Judgment in ***Rame Gowda***(supra) would not be applicable to the facts of the present case, since the question of settled possession in that case was decided after evidence was led by the parties. The present case is one of a challenge to the order of the temporary injunction wherein considerations are at the prima facie stage.

8. For the reasons stated above no infirmity can be found with the impugned order passed by the District Court. The order has correctly exercised Appellate jurisdiction under Order 43 Rule 1. As the findings rendered by the Trial Court at the prima facie stage were perverse and not based upon a consideration of the findings of the Trial Court (Judgments and Decrees of the earlier proceedings).

9. In that view of the matter, no infirmity can be found in the impugned order. The exercise of supervisory jurisdiction in favour of the Petitioner is not called for in this petition and hence, the same is dismissed with no order as to costs.

VALMIKI MENEZES, J.