Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO.1/2023
IN
CIVIL REVISION APPLICATION NO.20/2019

FRANCISCO VAZ (EXPIRED) AND ANR. ... APPLICANTS

Versus

ROSY NORONHA AND ANR. … RESPONDENTS

Mr Serrao J.R., Advocate for the Applicants.
Mr Vledson Braganza, Advocate for Respondent No.1.

CORAM: M. S. SONAK, J.

DATED: 18th JANUARY 2024

P.C.:

1. Heard Mr Serrao for the applicants and Mr Vledson Braganza for respondent no.1 (contesting respondent).

2. The applicants seek a review of the Judgment and Order dated 14.12.2022 made by the Coordinate Bench of Justice G. S. Kulkarni, J. on 27.09.2022 allowing Civil Revision Application No.20/2019 and setting aside the order made by the Executing Court holding that the decree obtained by the first respondent was not executable.

3. Mr Serrao, learned counsel for the applicant, submits that this Court, in para 17 of the Judgment of which review is applied, has correctly noted that the applicant raised a plea of nullity. He, however, submits that this plea of nullity was neither considered nor answered in the Judgment and Order dated 14.12.2022, of which review is applied.

4. Mr Serrao elaborates and submits that no decree for specific performance could have ever been granted in this matter because there was no valid and enforceable agreement. He further submitted that the so-called Vendors had no title to the property in question. He submits that these are matters which go to the root of the jurisdiction of a civil court to issue a decree of specific performance. He submits that if, despite the absence of a valid and enforceable agreement or lack of title in the Vendors, the court proceeds to issue a decree of specific performance, then such a decree is nullity and cannot be put into execution.

5. Mr Serrao submits that there are the above errors apparent on the face of the record to the Judgment and Order dated 14.12.2022, and therefore, this review application needs to be allowed, and the order of the Executing Court dismissing the execution proceedings needs to be restored.

6. Mr Vledson Braganza, learned counsel for the Decree Holder, defends the impugned Judgment and Order based on the reasoning reflected therein. He submits that the Court, after detailed consideration of all the contentions raised, has interfered with the order of the Executing Court, which was found to be

completely erroneous. Accordingly, Mr Braganza submits that this review petition may be dismissed.

7. The rival contentions now fall for determination.

8. In this case, there is no dispute that the trial court decreed the suit for specific performance. The First and Second Appeals against such decree were dismissed by the First Appellate Court and this Court, respectively. Mr Serrao admitted that the Judgment Debtors did not challenge the Judgment of this Court in the Second Appeal.

9. The contention that this Court did not consider the plea of nullity is fallacious. In any case, the judgments and orders made by the Trial Court, First Appellate Court and the Second Appellate Court cannot be stigmatised as nullities on the grounds today urged by Mr Serrao. Arguments like the absence of a valid, enforceable agreement or that there was no sufficient title in the Vendors are arguments on merits. These have been considered and decided against the Judgment Debtors on merits.

10. Even a wrong decision on merits may be appealed against but cannot stigmatised as nullity to resist execution proceedings. Therefore, if the Judgment Debtors were aggrieved by adverse decisions on the issues now put forth by Mr Serrao, their remedy was to institute appeals against those decisions. In fact, they did institute appeals to the First Appellate Court and the Second Appellate Court, but such appeals were unsuccessful. The matter was not carried further by the Judgment Debtors. It is extremely

doubtful whether such pleas could have again been raised to resist the execution. In any case, the Judgment and Order dated 14.12.2022 have recorded that these pleas lack merit. Accordingly, no case of any error apparent on the face of the record is made warranting the exercise of review jurisdiction.

11. In the context of vendors allegedly having no title, this Court, in its Judgment and Order dated 14.12.2022, has made the following observations at paras 50 and 51:-

> *"**50.** The second contention as urged on behalf of the judgment debtors is that the documents as brought on record in the proceedings under Section 47 before the Executing Court would not go to show that the suit property belonged to the judgment debtors. Such contention needs to be out rightly rejected, as all these issues were examined, in prior adjudications and there were categorical findings recorded, that there was no dispute as to the identification of the plots. Considering the evidence on record, such contention of the judgment debtors in this regard was rejected by the Courts as discussed in detail hereinabove. It needs to be observed that these issues as sought to be raised by the judgment debtors/respondents, in fact stands concluded in the adjudication of the suit and the appeals as noted above. Thus, the judgment debtors/respondents raising such issues in execution proceedings, in my opinion, is an exercise in futility and/or an unwarranted hair-splitting, by the judgment debtors*

before the Executing Court, which has misdirected itself, in going behind the decree.

51. *In any event, what would go to the root of the matter is the fact that it was absolutely not available to the judgment debtors to raise such issues, which stood concluded before the Trial Court, appellate Court and finally, before the High Court in the second appeal. Merely because defendant nos.1 and 2 are not surviving. that would not give any license to their legal heirs, namely. respondent nos. 1(a) to 1(f) and 2(a) to 2(e) to re-open the decree or to raise contentions which were either raised or could have been raised in prior proceedings leading to the finality of the decree, and that too in execution proceedings. Admittedly, the respondents/judgment debtors cannot be regarded as third parties, they have stepped in the shoes of the defendants and it would be their duty to honour and oblige the decree. It seems that the whole attempt of the judgment debtors was to create immense confusion on the identity of the property so as to wriggle out of the decree, when the identification itself was a non-issue."*

12. Thus, it is not correct to say that such a contention was not considered. The contention was not only considered but was rejected for reasons that cannot be called erroneous, let alone constituting any error apparent on the face of the record. The enforceability of an agreement is, again, an argument on merits. The three Courts have turned this down without any further appeal from the Judgment Debtors.

13. Even the arguments of nullity have been duly considered, and it is not correct to say that this plea was not even considered by the Court when disposing of Civil Revision Application No.20/2019. In paragraph 45, this Court has held that the decree would be a nullity if it is rendered by the Court without jurisdiction or if it is so vitiated as the law may provide. The Court has held that there was no reason to hold that this decree was a nullity based on the arguments raised before it.

14. Finally, the Court has held that this is a classic case where the Judgment Debtors, by raising all sorts of pleas, were interested in delaying the execution of the decree made on 28.12.2001 and confirmed by the Second Appellate Court on 13.12.2012. There was no error, much less any error apparent on the face of the record to exercise review jurisdiction. Instead, it is necessary to record that even the institution of this review petition appears to be yet another attempt to resist or delay the execution of the decree made in 2001.

15. For all the above reasons, this Review Petition is dismissed without any costs.

16. The Civil Application does not survive the disposal of the Review Petition and is accordingly disposed of.

M. S. SONAK, J.