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IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO.10 OF 2020
WITH
MISC. CIVIL APPLICATION NO. 498 OF 2024(F)
IN
APPEAL FROM ORDER NO. 10 OF 2020
WITH
CIVIL APPLICATION NO.17 OF 2020
IN
APPEAL FROM ORDER NO. 10 OF 2020

MARIANO VICTORINO D'SOUZA

AND 2 ORS.

....APPELLANTS/APPLICANTS

Versus

DIANA SILVYA FERNANDES

@ DIANA S. FERNANDES AND

11 ORS.

....RESPONDENTS

Mr. S. D. Lotlikar Senior Counsel with Mr. Sarvesh Sawant and Ms. Sailee Kenny, Advocates for the Appellants/Applicants.

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates for the Respondent Nos. 1 and 2.

Mr. Shivan Desai with Ms. Tahira Menezes and Ms. Riya Amonkar Advocates for Respondent Nos. 3 to 6.

CORAM:

BHARAT P. DESHPANDE, J

RESERVED ON:

29th August, 2024.

PRONOUNCED ON:

30th September, 2024

ORDER :

1. Heard Mr. S. D. Lotlikar Senior Counsel with Mr. Sarvesh Sawant and Ms. Sailee Kenny, Advocates for the

Appellants/Applicants; Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates for the Respondent Nos. 1 and 2 and Mr. Shivan Desai with Ms. Tahira Menezes and Ms. Riya Amonkar Advocates for Respondent no. 3 to 6.

2. Miscellaneous Civil Application No. 498 of 2024 (Filing) is filed for production of the report dated 31.10.2023 to be taken on record in the appeal from order so as to dispose of the said appeal effectively. This application is filed under Order XLI Rule 27 of the Civil Procedure Code (the C.P.C. for short) for production of additional evidence/documents by the Plaintiff.

3. Appeal from Order No. 10 of 2020 is filed challenging the order dated 09.01.2020 passed in Special Civil Suit No. 61/2019 thereby dismissing the application for temporary injunction filed by the Plaintiff/Appellants.

4. Mr. Lotlikar learned Senior Counsel appearing for the Appellants would submit that the Plaintiff is a U.S. Citizen who filed the suit for declaration, cancellation of Sale Deed, restoration of possession, damages, Mandatory Injunction in respect of three properties bearing survey nos.30/5; 30/6 and 30/7 situated at Arpora Bardez, Goa. The said properties were

originally owned and possessed by the late parents/parents-in-law of the Plaintiffs and Defendant Nos. 7 to 12. Somewhere in the year 2019, the Plaintiffs were informed that some labourers entered the suit property and started taking forcible possession, broke open lock of the gate and replaced it with a new lock. On receipt of such information the Plaintiff verified the survey records available online and was shocked to notice that names of Defendant Nos. 1 and 2 were incorporated in the Occupant's Column. The Plaintiff then obtained information through Right to Information Act and accordingly, got the knowledge that an Inventory Proceedings bearing No. 633/2018 were filed and vide Sale Deed dated 12/08/1993, one Antonio Caridade Piedade de Sequeira claiming to be Power of Attorney Holder of the late Parents/Parents-in-law of the Plaintiff fraudulently sold the suit property to Defendant No. 1. The Plaintiff also found that no Power of Attorney was enclosed to the Sale Deed.

5. Mr. Lotlikar would submit that alongwith the suit an application for temporary injunction was filed to restrain Defendant Nos. 1 and 2. However, such application was rejected by the Trial Court on the ground mentioned in the said order.

He submits that the impugned order is clearly perverse, illegal and without application of mind.

6. Mr. Lotlikar would submit that document which the Appellant is now trying to produce along with application, is very much relevant and important and it is a report showing that even the signatures on the Sale Deed which Defendant Nos. 1 and 2 claiming title, are forged. The stamps appearing on the Sale Deed of the concerned Department are also forged.

7. Mr. Lotlikar submits that this report was not available to the Plaintiff at the time of arguing the application for injunction, however, it was pointed out by the Plaintiff that the alleged Sale Deed is not accompanied by any power of attorney document. He submits that now it is fortified by the report given by the Ministry of Home Affairs, Government of India through Scientist working in the Central Forensic Science Laboratories, Pune, wherein the Sale Deed dated 12/08/1993 was forwarded along with other documents by the Special Investigating Team (SIT). He submits that this is a clear case of land grabbing by executing forged and manipulated documents.

8. Mr. Bhobe as well as Mr. Shivan Desai learned counsel appearing for the Respondents would submit that the matter before this Court is only an appeal from order which cannot be faulted with since there was no document available or filed before the Trial Court which the Appellants are now trying to produce. Both the learned counsel submit that observations of the Trial Court cannot be faulted with and thus, there is no question of producing such documents before this Court or before the Trial Court as tried to be projected by the Appellants. Both the learned counsel would submit that the alleged report will not be helpful to the Appellants while deciding the injunction application.

9. A perusal of the impugned order and the specific case by the respective parties, it is clear that the Sale Deed dated 12/08/1993 by which Respondent Nos. 1 and 2 claimed to have purchased the suit property was clearly executed by the Power of Attorney Holder by name Antonio Caridade Piedade Sequeira, a resident of Bombay. It is also mentioned that the instrument of General Power of Attorney was signed before the Notary at Mahim. No details of the said Notary, his registration number or the address is disclosed in the Sale Deed.

10. Mr. Lotlikar is right in submitting that the Respondent/Defendant ought to have produced such Power of Attorney document since it is not found along with Sale Deed.

11. The documents which the Appellant is now trying to produce was admittedly not available with him at the relevant time, however, such document is very much relevant to consider the prayer in the suit as well as the temporary injunction application.

12. In the case of *M/s Beach Estates Vs. M/s Likhani Holdings Limited, 1997 (1) CTC 566*, the Madras High Court while dealing with Order XLIII, Rule 1 and 2 read with Order XXXIX Rule 1 and 2 observed that even the Appellate Court is entitled to consider the document which is material and having bearing on the exercise of discretion in matter of granting or refusal of injunction. In that matter, the document was permitted to be produced before the Court and accordingly, the matter was remanded to Trial Court to decide it on its own merits.

13. Even though, an application is filed to produce the report, it is a matter of record that injunction application was decided

by the Trial Court on its own merit, which is challenged before this Court. Therefore, the propriety demands that by allowing the documents to be produced on record, the matter needs to be remanded to the Trial Court to decide the injunction application afresh by considering the report dated 31/10/2023, which the Appellant/Plaintiff is allowed to be filed on record. Such a report is certainly having a bearing on the matter. Similarly, while remanding the matter, the parties will have an opportunity to argue the matter afresh. Accordingly, the contention raised by the parties could be looked into on the basis of additional documents together with the pleadings of the respective parties so that the injunction application could be looked into and decided afresh. By doing so, the parties would get a fresh opportunity to address the Trial Court and in case of any adverse order, to challenge it before the Appellate Authority.

14. Accordingly, the best course is to allow the documents to be placed on record before the learned Trial Court, so that the temporary injunction application filed by the Plaintiff could be considered afresh. For that purpose, the impugned order needs to be quashed and set aside.

15. Accordingly, the impugned order is hereby quashed and set aside. The application filed for production of additional documents stands allowed and the matter is remanded to the Trial Court to hear the matter afresh on the temporary injunction application and decide it in accordance with law.

16. It is needless to mention that this Court has not gone into the merit of the contentions raised in the appeal.

17. All contentions of all the parties are kept open.

18. Appeal along with the civil applications are disposed of in the above terms.

BHARAT P. DESHPANDE, J.