

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.517 OF 2022
AND
MISC. CIVIL APPLICATION NO.2901 OF 2023(F)**

Mrs. Annapurna Belgaonkar
alias Maheshwari Mahadev Kumbhar,
Wife of Mr. Mahadev Kumbhar,
41 years of age, Housewife,
Indian National,
Residing at H. No.1426,
Housing Board Colony,
Sanquelim - Goa.Petitioner

Versus

1. Mr. Narayan Hirappa
alias Irappa Belgaonkar,
Son of late Hirappa Belgaonkar,
Major of age, Service, Married,
Indian National, H/o Kanekar, Vasant
Nagar, Sanquelim - Goa.
2. Mrs. Karuna Narayan Belgaonkar,
Wife of Mr. Narayan Hirappa alias
Irappa Belgaonkar,
Major of age, Housewife, Married,
Indian National, H/o Siddesh
Kanekar, Vasant Nagar,
Sanquelim - Goa.
3. Mr. Mahadev Maruthi Kumbhar,
Son of late Maruthi Kumbhar,
Major of age, self-employed,
Married, Indian National, Resident of
Kumbhar Galli, Nangad, Khanapur.

4. Mrs. Archana Belgaonkar alias Kalpana Ladu Sehtkar, Major of age, Housewife, Married, Indian National, Resident of H. No. 272, Kumbharwada, Sirvoi, Quepem, South - Goa.

Respondent nos.4
and 5 dismissed as
per order dated
11.12.2023, passed by
the Registrar, Judicial.

5. Mr. Ladu Vitthal Shetkar, Son of late Vitthal Shetkar, Major of age, self-employed, Married, Indian National, Resident of H. No.272, Kumbharwada, Sirvoi, Quepem, South - Goa.

6. Mrs. Suvarna Preetam alias Pritam Chalwadi, Wife of Pritam Gurunatha Chalwadi, Major of age, Housewife, Married, Indian National, Resident of H. No.66, Ratwaddo, Navelim, South - Goa.

7. Mr. Pritam alias Preetam Gurunath Chalwadi,
Son of Gurunath Chalwadi, Major of age, self-employed, Married, Indian National, Resident of H. No.66, Ratwaddo, Navelim, South - Goa.

....Respondents

Mr A.D. Bhobe with Ms A. Fernandes, Advocates for the Petitioner.

Mr Gaurish Agni with Mr K. Kavlekar, Advocates for Respondent Nos.1 and 2.

CORAM: **M. S. SONAK, J.**

DATE: **14th MARCH 2024**

ORAL JUDGMENT :

- 1.** Heard Mr A.D. Bhobe, who appears with Ms A. Fernandes for the petitioner and Mr Gaurish Agni, who appears with Mr K. Kavlekar for respondent nos.1 and 2.
- 2.** Mr Bhobe points out that respondent nos.1 and 2, who are the original plaintiffs in Regular Civil Suit No.7/2021/C pending before the Civil Judge, Junior Division, Bicholim, are the main contesting respondents in this petition.
- 3.** Accordingly, this petition is taken up for final disposal at the request of and with the consent of the learned Counsel for the parties.
- 4.** The first and second respondents (plaintiffs) instituted the above suit seeking, *inter alia*, for partition and declaration that the Will dated 22.01.2019 executed by Geeta Belgaonkar (mother) bequeathing the suit house in favour of the petitioner (daughter) is null and void.
- 5.** In the above suit, the plaintiffs applied for an injunction to restrain the petitioner from alienating the suit house/suit plot or interfering with the plaintiff's possession of the suit house/suit plot (Exhibit D).
- 6.** While Exhibit D was pending, the plaintiffs, alleging that they were dispossessed, applied for a temporary mandatory injunction for restoration of possession (Exhibit D-26). The trial court dismissed this Application. The appeal Court, however, by the impugned order dated

12.09.2022, allowed this application and issued a mandatory injunction. Hence, this petition.

7. On 06.10.2022, this Court protected the petitioner by making the following order:

“P.C.:

Issue notice to respondents, returnable on 17 November, 2022. In addition to Court's notice, petitioner is permitted to serve respondents by private service by all permissible modes and place on record affidavit of service on or before the returnable date.

*2. Having perused the impugned order passed by the learned District Judge dated 12 September, 2022, in Misc. Civil Appeal no. 48 of 2021 filed by the respondents-plaintiffs in my opinion, ad-interim relief will be required to be granted. This for the reason that it is *prima facie* observed that the impugned order has made substantial observations at the interim stage of the proceedings on disputes in a partition suit. Also admittedly, the plaintiff was not residing in the suit premises as he was occupying rented premises and has a desire now to occupy the suit premises which itself is the subject matter of the pending proceedings.*

3. Till the adjourned date of hearing, the impugned order passed by the learned Adhoc District Judge-I shall remain stayed.”

8. The interim protection has continued to this date. The record shows that the main injunction application at Exhibit D-3 is still pending consideration before the Trial Court. Therefore, the orders made on the application at D-26 were in the nature of ad interim orders.

9. Accordingly, without going into the rival contentions, the interest of justice would be met if the Trial Court is directed to dispose of the main application for interim reliefs (D-3) as expeditiously as possible, on its own merits and in accordance with law. Although it is proposed to set aside the impugned order dated 01.09.2021 made by the appeal Court, such setting aside is with liberty to the plaintiffs to urge all contentions, including the contention that they are entitled to mandatory injunction at the temporary stage.

10. The plaintiffs may formally amend their application for interim relief or the plaint if necessary. Such amendment is allowed, clearly without prejudice to the rights of the petitioner and other parties, to contest such amendment or its contents on merits. Based on this order, Mr Agni states that such an amendment will be carried out within fifteen days from today. Mr Agni states that within this period, copies of the amended plaint/application will be furnished to the learned counsel for the defendants/defendants. The defendants would then be entitled to file their additional written statement within fifteen days from the receipt of the amended copies. The trial Court is requested to facilitate this.

11. Accordingly, the impugned order dated 12.09.2022 is set aside. The Trial Court is directed to dispose of Exhibit D-3 (as amended) as expeditiously as possible and preferably within four months from the parties placing an authenticated copy of this order on record. All contentions of all parties are explicitly kept open.

12. The Trial Court must decide Exhibit D-3 (as amended) without being influenced by its earlier orders, the order dated 12.09.2022, or the fact that this Court now sets aside the order dated 12.09.2022. Similarly, the Trial Court also must not be influenced by this Court's order dated 06.10.2022, *inter alia*, because the same was only an ad interim order made without notice to the plaintiffs. In short, all contentions of all parties on the merits or otherwise of the application at Exhibit D-3 (as amended) are explicitly kept open.

13. With the above directions, this Writ Petition and Misc. Civil Application No.2901/2023(F) are disposed of.

14. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.