

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CW-95-2020**

Julieta Andrade Luis & Anr. ... Petitioners

Versus

Aleluia Fernandes & Anr. ... Respondents

Shri Dhaval Zaveri, Advocate for the Petitioners.

Shri Anthony D'Silva and Shri J. Reis, Advocates for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 10th August 2020****ORAL ORDER:**

The petitioners are the defendants in RCS No.122 of 2016 before the Court of Civil Judge, Senior Division, at Margao. In that suit, the respondents are the plaintiffs. They sued for a declaration and a permanent injunction. In that suit, the respondents have also applied for an *ad interim* injunction.

2. Through an order dated 25.06.2018, the trial Court dismissed the injunction application under Order 39 Rule 1 of CPC. Aggrieved, the respondents carried the matter in Misc. Civil Appeal No.67/2018 before the District Judge 1, FTC-I, South Goa, Margao. Through the impugned judgment dated 23.06.2020, the appellate Court has granted the following relief:

“The appeal stands granted.

The impugned order is quashed and set aside.

The defendant nos.1 and 2 are restrained from interfering in the suit property and/or with the trees in the

suit property and/or constructing therein, creating any third-party rights in respect of the suit property or carrying out any survey formalities such as partition under Land Revenue Code etc. until further orders.

Parties shall bear the costs.

Proceedings closed.”

3. This time, the defendants were aggrieved and, accordingly approached this Court through this Writ Petition.

4. Both the learned counsel have extensively argued the matter. In the end, Shri D. Zaveri, the petitioners' counsel, has pointed out that the respondents, as the plaintiffs, have already amended the pleadings seeking, among other things, recovery of possession as well. Therefore, at least the first limb of the relief granted by the appellate Court is incorrect. Shri Zaveri has also fairly submitted, on instructions, that without prejudice to the petitioners' rights in the pending suit, they undertake to comply with the rest of the directions in the impugned order.

5. On the other hand, Shri Anthony D'Silva, the learned counsel for the respondents, has submitted that the respondents have never conceded that they have lost the possession or that the petitioners possess the property. They have sought to amend the pleadings, according to him, only out of abundant caution. At any rate, he too has fairly agreed that if the petitioners comply with the rest of the order as pointed out by their counsel, the respondents will not have any grievance on that count.

6. Under these circumstances, without adverting to the merits of the matter, I hold that the impugned judgment dated 23.06.2020 stands altered. Barring the direction as to petitioners' "interfering in the suit property", the rest of the impugned judgment remains intact.

With the above modification, I dispose of the Writ Petition.

DAMA SESHADRI NAIDU, J.

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