

(2008) 09 BOM CK 0014

Bombay High Court (Goa Bench)

Case No: Appeal From Order No. 7 of 2008

Mr. Minguel Joao
Martins

APPELLANT

Vs

Mrs. Maria Luzia
Fermina Simoes e
Luis(since deceased)
represented by her
constituted Power of
Attorney Mr. Joao
Bosco Pinto alias
Bosco Pinto and Others

RESPONDENT

Date of Decision: Sept. 19, 2008

Citation: (2008) 09 BOM CK 0014

Hon'ble Judges: N.A. Britto, J

Bench: Single Bench

Advocate: S.D. Lotlikar, with Mr. P. Lotlikar, for the Appellant; M.S. Joshi, Advocate for Respondent Nos. 2, 4, 5, 6, 7 to 17. Mr. and Nigel Costa Frias, Advocate for Respondent Nos.18 and 19., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.A. Britto, J.

This Appeal is directed against Order dated 19-7-2007 of the learned Civil Judge, Senior Division, Panaji, by which the learned Civil Judge has dismissed the application for temporary injunction filed by the Plaintiff. The Plaintiff(appellant herein) has filed a suit on 3-10-2006 for specific performance of agreement, with the allegation that there was an agreement for sale dated 24-3-1987 between the Plaintiff and Emanuel Luis and his wife Maria Luzia Fermina Simoes for sale of the property surveyed under No. 12/9(entire) at the rate of Rs. 30/-per sq. meter which sale was to be executed after the dispute was

resolved.

2. The case of the Defendants was that there was no such agreement. There is no dispute that the said property surveyed under No.12/9 is adjacent to the Plaintiff's property surveyed, under No. 13/10 in village Taleigao and belonged to two brothers, namely Fr. Joao Luis and Emanuel Luis. The Defendant No. 1 is the widow of the said Emanuel Luis and Defendant Nos. 2, 7, 8, 12 and 16 are their children and the remaining Defendants except Defendant Nos. 18 and 19 are their spouses.

3. Defendant Nos. 18 and 19 purchased a plot of the said property by sale deed dated 18-5-2005.

4. The facts brought on record further show that the said Fr. Joao Luis had executed a general power of attorney in favour of his said brother Emanuel Luis dated 16-7-1984, and, prior to his death on 29-10-1993 the said Fr. Joao Luis along with his brother the said Emanuel Luis and his wife the said Maria Luzia Simoes has entered into an agreement of sale on 28-1-1982 with one Vivek Sakhardande, which agreement as per the Respondents came to an end after the death of the said Sakhardande. The said Fr. Joao Luis by Will dated 1-6-1990 bequeathed his share in the property in favour of his niece, the Defendant No. 4. The said Emanuel Luis expired on 19-12-2004 and his widow the said Maria Luzia Simoes expired after filing of the suit. The Plaintiff issued a public notice on 27-12-2005 and thereafter filed the suit on 3-10-2006.

5. The learned trial Court came to the conclusion that the Plaintiff had failed to make out a prima facie case. The learned trial Court also came to the conclusion that Defendant Nos. 18 and 19 had made out a better title to the plot of 471 sq. meters purchased by them by deed dated 18-5-2005 and that they would suffer injury in case injunction was granted in favour of the Plaintiff. The learned trial Court also came to the conclusion that the Plaintiff had failed to establish the existence of the said agreement dated 24-3-1987. As regards possession the learned trial Court also came to the conclusion that it was the said Defendants who were in possession of the said property.

6. Mr. S. D. Lotlikar, learned Senior Counsel, on behalf of the Plaintiff, has submitted that the Plaintiff's agreement dated 24-3-1987 was with the said Emanuel Luis and his wife the said Maria Luzia Simoes and was reduced in writing on a copy of plan and the sale deed was to be executed after the disputes were settled and as such there was no question of any limitation to execute the sale deed. Learned Senior Counsel further submits that although the said agreement does not show that it was executed by the said Emanuel Luis on behalf of his brother the said Fr. Joao Luis it is evident that the said Emanuel Luis Simoes, had power of attorney given to him by his said brother Fr. Joao Luis. Learned Counsel further submits that if at all the Plaintiff remained quite all the years it is because the said Emanuel or his wife the said Maria Luzia Simoes did not intimate the Plaintiff that the disputes between them were settled. Learned Counsel further submits that the least the learned trial Court ought to have done is to restrain the

Defendants from creating third party rights, and, in fact that is the only relief learned Senior Counsel now seeks in this appeal.

7. Mr. M.S. Joshi, learned Counsel on behalf of Respondent Nos. 2, 4, 5, 6, 7 to 17 submits that the said agreement recorded on the plan is nothing but a forgery. Learned Counsel further submits that the signatures of the said Emanuel Luis and the said Maria Luzia Simoes do not tally with their admitted signatures on the documents produced by the said Respondents. Learned Counsel further submits that the proceedings before the Mamlatdar, at page 145 do not refer to any dispute involving the said Emanuel Luis and the said Maria Luzia Simoes.

8. Mr. Nigel Costa Frias, learned Counsel on behalf of Respondent Nos. 18 and 19 submits that in case the Plaintiff had an agreement for sale of the property with the said Emanuel Luis and the said Maria Luzia Simoes the Plaintiff would not have remained quiet for such a long time and least would have called upon the said Emanuel or after his death the said Maria Luzia Simoes for execution of the sale deed or try to know as to what happened to the so called dispute.

9. As per the Plaintiff, the agreement between the Plaintiff and the said Emanuel was recorded on a blue print copy of the plan of the property. A perusal of the writings thereon can be seen having been made by three different persons. Although the Defendants have claimed that the signatures of the said Emanuel Rafael Simoes and Maria Luzia Simoes have been forged, the Plaintiff has also not explained as to who wrote the part of the agreement or endorsement by which it is stated that the said Emanuel and Maria Luzia Simoes had received Rs. 8000/- from the Plaintiff.... etc. In case the Plaintiff had really entered into a written agreement with the said Emanuel least the Plaintiff would have done for 19 long years is written a letter to the said Emanuel or his wife trying to find out as to what had happened to the said dispute. Plaintiff's attempt to show that there was a dispute has been rightly rejected by the learned trial Court by observing that the proceeding sheet of Mundkar Case No. MND/REG/1818/80 does not relate to the said Respondents but it was in relation to one Sonu Bandodkar as the applicant and one Mr. Viegas and another Claudio Viegas as respondents. The learned trial Court has also observed that neither Emanuel or Joao Luis are seen as party Respondents to the proceedings nor there is a reference and as such the documents were insufficient to support the claim of the Plaintiff about the pending property dispute of which the execution of the sale deed was delayed. The agreement dated 28-1-1982 produced by the Respondents shows that it was executed by Fr. Joao Luis, his brother Emanuel Luis as well as the latter's wife, and if that be so, the agreement in question would also have been executed in the same manner, but there is no reference in the said agreement to the said Fr. Joao Luis. In other words, it is not shown by the Plaintiff that it was executed, assuming it was so executed, by the said Emanuel and his wife, that it was also executed on behalf of his said brother priest. The long silence on the part of the Plaintiff, in case he had executed such an agreement and was interested in purchasing the property, makes the case of the Plaintiff extremely improbable and therefore the conclusion arrived at by

the learned trial Court that the Plaintiff had failed to make out a prima facie case that the Plaintiff had failed to establish the agreement dated 3-4-1987 could not be faulted and if that be so, there is no question to any restraint being placed on the Respondents, even from creating third party rights. There is no substance in this appeal and consequently the same is hereby dismissed with costs.