

CIVIL REVISION APPLICATION NO.160 OF 2000

1. Mrs. Thereza Coutinho,
major, housewife,
r/o House No.5/174/C,
Umtavaddo, Calangute,
Goa.
2. Mr. Peter Coutinho,
major, retired,
r/o House No.5/174/C,
Umtavaddo, Calangute,
Goa.
3. Mrs. Stella Jesus Baptista,
major, landlady, widow.
4. Mr. Simon Baptista,
major in service.
5. Mr. Vincent Baptista,
major, unemployed,
All r/o House No.5/174/C,
Umtavaddo, Calangute, Goa.
6. Mr. Victor Francis Coutinho,
major, retired.
7. Mrs. Lara Coutinho,
major, housewife,
both r/o St. John Baptist
Road, Bandra (West) Mumbai 50. ... Applicants.

versus

Mr. Anthony Joseph D'Souza,
major, r/o House No.5/212,
Umtavaddo, Calangute, Goa. ... Respondent.

Mr. Joseph Vaz, Advocate for the Applicants.

Mrs. A. A. Agni, Advocate for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 21ST MARCH, 2002.

ORAL JUDGMENT

This Civil Revision Application arises from
a Judgment and Order passed by the IInd Additional
District Judge, North Goa, Panaji, in Miscellaneous

Civil Appeal No.104/98 allowing the aforesaid Appeal and the injunction application filed by the present Respondent.

2. The learned Trial Court had dismissed the application for injunction which was filed by the present Respondent, who was the Plaintiff before the learned Trial Court in a suit for specific performance of the contract and for permanent injunction. The learned Trial Court after considering and evaluating the documents filed by the parties in support of their respective claims dismissed the application for injunction filed by the Respondent/Plaintiff, while allowing the application of the Defendant. The Respondent/Plaintiff being aggrieved by the dismissal of his application for injunction, filed Miscellaneous Civil Appeal No.104/98 before the IInd Additional District Judge, North Goa, Panaji. The learned IInd Additional District Judge by his Judgment dated 29th December, 1999, allowed the Appeal filed by the Respondent/Plaintiff and granted the Respondent/Plaintiff the injunction which was prayed for. By virtue of the mandatory injunction granted by the learned Appellate Court, the Applicants/Defendants, who were in possession, was dispossessed and the possession is at present with the Respondent/Plaintiff. The present revision seeks to

challenge the aforesaid Order of the learned IInd Additional District Judge, North Goa, Panaji.

3. I have heard Mr. Joseph Vaz, the learned Advocate appearing for the Applicants/Defendants and Mrs. A. A. Agni, the learned Advocate appearing for the Respondent/Original Plaintiff.

4. In the present case, the learned Trial Court had appointed one Advocate N. S. Porob as a Commissioner and the said Commissioner had submitted his report on 16th February, 1996. The said report of the Commissioner was objected to by the Applicants/Defendants by filing their Affidavit. The learned Trial Court examined the Commissioner on oath and unfortunately the notes of the deposition do not show that an opportunity was given to the parties to cross-examine the Commissioner particularly in view of the fact that the Respondent had raised objection to the report of the Commissioner. The learned appellate Court, appears to have been impressed by the evidence of the Commissioner and particularly in view of the fact that the Applicant/Defendants had not cross-examined the Commissioner and, therefore, what was contended by them could not be accepted in view of the testimony of the Commissioner.

5. A perusal of the deposition shows that the learned Trial Court had not afforded any opportunity

to the parties to cross-examine the Commissioner. If this opportunity was not availed of by the parties, it could have been so recorded by the learned Trial Court. From the record, it does not appear that the learned Trial Court had afforded an opportunity to the parties to cross-examine the Commissioner. This is one of the grievance which is advanced and was also advanced before the learned appellate Court. According to me, before accepting the evidence of the Commissioner he ought to have subjected to cross-examination of the parties. The evidence of the Commissioner is of vital importance and is relied upon by both the parties to establish their respective pleas of possession. In such circumstances, I am of the opinion that the matter needs to be remitted back to the learned Trial Court affording opportunity to the parties to cross-examine the Commissioner. Since the Respondent/Plaintiff is said to be in possession of the suit premises, the possession of the Respondent/Plaintiff needs to be protected till the learned Trial Court decides the respective permanent injunction of the parties.

6. In the result, therefore, Civil Revision Application No.160/2000 is allowed and the Judgment

and Order of the learned Additional District Judge, dated 29th December, 1999 in Miscellaneous Civil Appeal No.104/98 and the Order of the learned Trial Court dated 31st July, 1998, is hereby quashed and set aside. The learned Trial Court to reconsider the injunction application of the respective parties afresh after giving the parties an opportunity to cross-examine the Commissioner. The learned Trial Court shall complete the cross-examination of the Commissioner within fifteen days from the receipt of the copy of this Order. The learned Trial Court shall then proceed to hear the respective Advocates and decide the injunction application as expeditiously as possible and in no case later than June, 2002. The learned Trial Court shall not be influenced by any of the observations made in the Judgment which is quashed and set aside and shall independently decide the matter on merits.

7. Civil Revision Application No. 160/2000 is allowed with no order as to costs.

(P. V. HARDAS)
JUDGE