

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 48 OF 2002 AND
CIVIL APPLICATION NO. 262 OF 2002.

Mrs. Ivy Muriel Fonseca,
major of age,
resident of Radiant Park,
968, Nana Peth,
Pune - 2.

... Appellant.

VERSUS

Mr. Porus Adi Doctor,
major, son of Adi H. Doctor,
resident of 'Perin Villa',
Dr. Borkar Road, Alto Porvorim,
Bardez, Goa.

... Respondent.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe,
Advocate for the Appellant.

Mr. F.N. Tavora, Advocate for the Respondent.

CORAM: S. RADHAKRISHNAN, J.

DATE: 26TH SEPTEMBER, 2002.

ORAL JUDGMENT:

Heard the learned counsel for the appellant
as well as the learned counsel for the respondent.

2. By this appeal the appellant who was the original defendant has challenged the Order dated 15th June, 2002 by the learned Civil Judge, Senior Division, Mapusa, whereby ad-interim relief which had been earlier granted in terms of prayers (a) and (b) were confirmed. The respondent herein who was the original plaintiff had filed a suit for relief of specific performance, declaration and injunction.

The plaintiff and defendant had entered into an Agreement for Sale dated 22nd August, 2001 which the plaintiff is seeking to get specifically performed.

3. After hearing the parties for some time, it is agreed between the parties that in the larger interest of justice if the hearing of the Suit itself is expedited so as to resolve the dispute once and for all. Under these circumstances, without going into the merits or demerits of the impugned Order dated 15th June, 2002, the following Order is passed:

(a) The respondent herein who was the original plaintiff shall furnish a Bank Guarantee of a nationalised Bank in the sum of Rs.15,00,000/- to the satisfaction of the Civil Judge S.D., Mapusa within a period of one month from today.

(b) The learned Civil Judge S.D., Mapusa is directed to dispose of the Special Civil Suit No.85/2001/C as expeditiously as possible, preferably on or before 31st March, 2003.

(c) The appellant herein who was the original defendant may claim mesne profits if entitled and if mesne profits are awarded in the above Suit, the appellant is entitled to recover the same from the

aforesaid Bank Guarantee.

(d) The appellant has filed a Valuation Report with regard to the bungalow and out-house including the land valued at Rs.30,82,000/- by Architect Shri S.N. Bhobe dated 5th September, 2002. The respondent has also filed a Valuation Report of one Mr. R.V. Tamba dated 2nd September, 2002 valuing the land at Rs.10,56,250/-.

4. In view of the above, the aforesaid Bank Guarantee of Rs.15 lakhs has been directed to be furnished. It is made clear that the Trial Court is totally free to determine the correct value of the suit property at the time of trial, and not bound by the above figure of Rs.15 lakhs.

5. The respondent herein shall not part with possession to any third party, induct any third party or transfer, alienate or encumber the suit property during the pendency of the suit.

6. The appellant who is present in Court and the learned counsel for the appellant on instructions states that the appellant will not attempt to enter the suit premises till the disposal of the suit and will also not create any third party rights with

regard to the suit property.

7. In the event the respondent fails to furnish the above Bank Guarantee of Rs. 15 lakhs in the Trial Court within a period of one month from today, the appellant will be at liberty to forcibly enter the suit premises by seeking the assistance of the Police if need be.

8. The Appeal from Order accordingly stands disposed of in the above terms.

9. In view of the disposal of the Appeal from Order, nothing further survives in the Civil Application. The same stands dismissed.

S. RADHAKRISHNAN, J.

sl.