



GANG050013632023

ORDER BELOW EXHIBIT D-3

(Delivered on this 07th day of the month of August of the year 2026)

This order shall dispose of the application filed by the plaintiff for temporary injunction under Order XXXIX Rule 1 and 2 r/w section 151 of the Civil Procedure Code, 1908 (in short C.P.C.)

Case of the plaintiff:

2. The plaintiff and the defendant are partners of a partnership firm M/s Pria Ventures, having its registered office at A3-G3/4 Comunidade Mini Market Ganeshpuri, Mapusa Bardez Goa. The

partnership deed was executed before Notary Adv. S.G. Deshpabhu Mapusa Goa on 19.10.2019 registered under Reg. No. 6860/2019.

3. The partnership was an outcome of a good friendship between the plaintiff and the defendant. The partnership firm was constituted to carryon business of promoting art, culture, event management, heritage stay/experience, setting up Café, restaurant and other allied activities.

4. The plaintiff and the defendant purchased a property under the partnership for the purpose as stipulated in the partnership deed. They purchased an immoveable property admeasuring an area of 300 sq.mts along with an old residential house admeasuring an area 120 sq.mts and bearing H. No. 807, situated at Thivim bearing survey 100/2 of village Thivim Taluka and Sub District of Bardez District of North Goa. The said property shall hereinafter be referred to as the suit property.

5. The said suit property was purchased by the plaintiff and the defendant vide Deed of Sale dated 07.01.2020 registered under number BRZ-1-67-2020 Book I Document.

6. At the time of purchase the defendant expressed his inability to pay half of the amount and expenses in purchasing the suit property and requested the plaintiff to do the needful to help him, and stated that he is in financial crises and will repay her back and as such the plaintiff relying upon the defendant and being a good friend put her money more than her liability in the partnership.

7. That total consideration of the property was Rs. 42,00,000/- which had to be contributed equally but since the defendant expressed his inability to pay half the amount in purchasing the property, the plaintiff had to incur extra cost more than her half liability.

8. The plaintiff and the defendant opened a Café namely NH66 at Porvorim in the month of November 2019. While opening the café business it is the plaintiff who spent amount of the initial opening of the café.

9. Immediately in the month of March 2020 a lockdown for Covid Pandemic 2020 was declared and as such the business went into loss. All the accounts of the business profit and loss had been entered into

accounts of the business of which the defendant was fully aware. Seeing the loss in the business, the defendant started neglecting the business, blocked the phone calls of the plaintiff due to which she could not contact him for business purpose.

10. On 10.06.2020 the defendant issued a notice for retirement from the partnership to the plaintiff, vide making various allegations, which was again replied by the plaintiff on 25.06.2020.

11. After reply of the notice dated 25.06.2020 the defendant again replied through his Advocate Pratima Khobrekar @ Chodankar on 21.07.2020 with again vague allegations and stating that the defendant did not want to retire with respect to the property of the partnership. That the plaintiff again replied to 21.07.2020 reply on 03.08.2020 to Adv. Pratima Khobrekar.

12. That thereafter another legal notice dated 27.11.2020 through Adv. Gandhali Kharbe (Pednekar) was again replied by the plaintiff through her lawyer on 23.12.2020.

13. It is submitted that when the defendant showed his intentions of retirement from the partnership, he has no longer right in the suit property, but he published for sale of the property on social media like Whatsapp which came to the knowledge of the plaintiff, and the same was replied in the notice date 23.12.2020 to the defendant wherein defendant was instructed not to deal with the suit property without the consent of the plaintiff.

14. When the plaintiff went to visit the suit property, she noticed that the defendant had put a new lock on the door of the house over the existing lock in the suit property, which is now in a dilapidated condition with grown trees and bushes all around making it difficult to enter in the whole property.

15. That since the defendant has been retired from the partnership he had no right over the suit property and could not interfere in the suit property without the consent of the plaintiff. The plaintiff notice that some construction material is dumped in the suit property without her consent and there is possibility that the defendant can change the structure of the property. She is unable to maintain the suit property or

enter the house as the defendant has put a new lock over the existing lock and denied access to the plaintiff.

16. That the plaintiff has made out a strong prima facie case for grant of temporary injunction and the balance of convenience is in her favour and the irreparable loss and hardship would be caused to her if the defendant is not restrained.

17. It is prayed that:-

a) Pending the hearing and final disposal of the suit on merits, the defendant, his agents, servants, family person or any persons acting for him or under him or on his behalf or under him be restrained by an order of temporary injunction from interfering in the suit property in any manner, to restore suit property to its original status, not to carryout any construction in the suit property to handover the original Sale Deed of the suit property.

a (i) This Hon'ble Court be pleased to direct the defendant by order of temporary injunction to remove the new lock installed by him over the existing common lock, which is over the main door of the house in the

suit premises, thereby providing access to the Plaintiff to the same, within the period of 8 days from the date of passing of the said order and upon failure of the defendant to comply with the same, the plaintiff be permitted to break open the said lock.

a (ii) The defendant, his agents, representatives, servants, family members and/or any person acting for him or under him or on his behalf, be restrained from selling, renting, leasing, mortgaging or creating any third party rights or interest of whatsoever nature, in any form, with respect to the said suit property.

a (iii) The defendant be directed to remove the construction material from the suit property within the period of 8 days from the date of passing of the said order and upon failure of the defendant to comply with the same, the plaintiff be permitted to dispose the same.

b) Ad - interim relief of ex-parte temporary Injunction be granted in terms of prayer (a), (a)(i), a(ii) and a(iii) above.

c) Any other order this Hon'ble Court deems fit and proper.

Case of the defendant:

18. Reply is filed by the defendant. It is contended that the suit property which is the subject matter of the suit is standing in the name of the partnership firm of the defendant and plaintiff and as such there arises no question of the defendant to sell or to make any attempt to sell the suit property behind the back of the plaintiff. That the relief sought by the plaintiff is imaginary and premature and without any cause of action.

19. It is submitted that in the year, 2018, the plaintiff had met the defendant and thereafter they developed good friendship.

20. That the plaintiff was intending to do the business of event management and she was in need of premises and as such the defendant allowed the plaintiff to use and occupy one of the extra cabin existed to the clinics of the defendant at Ganeshpuri as well as at Chapora on leave and Licence basis at monthly compensation of Rs.10,000/- to run her contact office for her business. That besides the profession of the defendant as Medical Consultant and Gynecologist, the defendant has hobby of event performance and management and as the plaintiff learnt about the said hobby of the defendant, the plaintiff continuously started

instigating the defendant to join as a Partner in the business of the plaintiff.

21. The plaintiff had developed good friendship with the defendant, due to continuous instigation from the plaintiff to join her in the partnership business, the defendant agreed to start a partnership business with the plaintiff and accordingly, the plaintiff and the defendant started the partnership business in February, 2019 under name and style as 'M/s. PRIA VENTURES' at equal shares. That they could not execute a partnership agreement and register the partnership business with the concerned authority and as a result of which the plaintiff and the defendant could not open a Bank account in the name of the said Partnership Firm.

22. It is submitted that since they could not open Bank account in the name of said Partnership Firm, it was decided by the plaintiff and the defendant that for time being until the Bank account of said partnership was opened, they would deposit the income proceeds of said partnership business in the personal saving bank account of the plaintiff.

23. The plaintiff and defendant entered into a Deed of Partnership dated 10.10.2019. They opened a bank account of the said partnership business on 03.03.2020. The plaintiff with malafide intentions and with ulterior motives did not transfer the said balance proceeds of said partnership business lying in her personal saving account into the said bank account of the said partnership business. The plaintiff and the defendant purchased a property for a total consideration of Rs.42,00,000/- which is paid in equal shares by the plaintiff and the defendant and all the expenses towards stamp duty, registration fees and other expenses in respect of said purchase transaction were done from the said business proceeds of the partnership business and the plaintiff and the defendant purchased the said property and the house existing therein in favour of said partnership firm M/s. PRIA VENTURES.

24. The house and the suit property had a common lock with two keys, one was with the plaintiff and another with the defendant. In July 2023 when the defendant visited the suit property he found commission of illegal acts in the suit property and noticed some condoms thrown in the waste basket, empty small whisky bottles, remains of smoke

cigarettes, empty plastic bottles etc and when he asked she did not answer.

25. In the third week of July when he visited the suit property he noticed that the common lock of the house had changed and he asked the plaintiff and she did not pick up the calls and as such he put his own lock over the changed lock so that the plaintiff could visit the house in his presence for the purpose relating to the business of partnership firm and not for illegal activities.

26. That the plaintiff has not contributed any money for maintenance of the house and the property and the same is done by the defendant. That there is no prima facie case made out for grant of injunction and no ground is made out to show that irreparable loss would be caused to the plaintiff. It is submitted that the application be dismissed.

27. I have heard the arguments advanced. Arguments were canvassed by Adv. S. Fahad for the plaintiff and Ld. Adv. Shri. N.

Verenkar argued on behalf of the defendant. I have also perused the written arguments filed on record.

28. The following points arise for my determination and my findings thereon are as follows:-

Points

Findings

1) Whether the plaintiff has made out a prima facie case in his favour?

In the affirmative.

2) Whether the balance of convenience tilts in favour of the plaintiff?

3) Whether irreparable loss would be caused to the plaintiff if temporary injunction is not granted?

In the affirmative.

In the affirmative.

REASONS

As to Point No. 1:-

29. The present suit is filed by the plaintiff for declaration and injunction alongwith consequential reliefs. The plaintiff and the defendant have entered into a partnership and they have a partnership firm in the name of M/s Pria Ventures. They have jointly purchased the suit property. I have perused the deed of partnership dated 19.10.2019 produced by the

plaintiff. I have also perused the deed of sale dated 03.01.2020 wherein M/s Pria Ventures has purchased the suit property from one Jitendra Sagun Vadkar. Therefore it is seen that the suit property is purchased by the partnership firm M/s Pria Ventures.

30. It is argued by Adv. Shri S. Fahad that the defendant is no longer a partner of M/s Pria Ventures as he has retired from the partnership firm. That therefore he cannot interfere in the day to day management of the partnership firm and has no right to restrain the plaintiff from accessing the suit house. The plaintiff has produced on record one notice dated 10.06.2020 addressed to her by the defendant wherein he has stated that he has decided to retire from the said partnership. He has contended that there is a breach of the agreement and it is difficult to manage the partnership under regular losses and by exercising the power under clause 20 of the partnership deed dated 10.10.2019 the notice was given for retiring from the partnership firm.

31. According to the plaintiff the defendant has put a new lock on the door of the house which is situated in the suit property due to which she cannot access the suit property. She has submitted that the

house is in a dilapidated condition. In support of her contention she has placed on record photographs which reveal that the house is surrounded with bushes and plants and appears to be in a dilapidated condition. A photograph also reveals that the house door has two locks.

32. It is contended by Adv. Shri. S. Fahad that the defendant has retired from the partnership firm and therefore cannot interfere with the assets of the firm. Per contra, Adv. Shri. N. Verenkar has argued that the retirement consideration is not settled and the defendant continues to be a partner in the partnership firm. The partnership deed dated 19.10.2019 reveals that the plaintiff and the defendant had entered into a partnership agreement. Clause 20 of the partnership deed stipulates that if a partner wishes to retire from the said partnership then he could do so by issuing a retirement notice which upon completion of three months, the said partner would be deemed a retired partner. Therefore as per the said clause after a period of three months the defendant would be deemed to be a retired partner. Prima facie it is seen that the defendant is deemed to be the retired partner of the said firm though he claims to continue as a partner.

33. According to the plaintiff the defendant has put a lock to the house and therefore she cannot access the house. The defendant himself has contended that he has put a lock to the said house in addition to a lock put by the plaintiff. It is his contention that the plaintiff had put a new lock. However, nothing has been placed on record to show as to what action he has taken against the said act of the plaintiff. He has failed to establish by way of prima facie evidence that the plaintiff had changed the lock. On the other hand he has admitted that he has put another lock so that the plaintiff can visit the house in his presence. The records prima facie reveal that he is a retired partner. Assuming for a minute that he continues to be the partner, he cannot restrain the other partner from accessing the suit house which is an asset of the partnership firm. The partnership firm has not been dissolved and the assets have not been liquidated and the said house and the property is not a personal asset of the defendant.

34. In the case of **Sachin Jaiswal Vs. Hotel Alka Raje and ors., reported in 2025 SCC online SC 446** it was held that “7. *It seems to us that looking to the scheme of the Indian Act no other view can reasonably be taken. The whole concept of partnership is to embark upon*

a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the trading asset of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which has brought in, much less over any other partnership property.”

35. It is settled position of law that a retired partner cannot interfere in the day to day management, operation or control of the assets of a partnership firm as once a partner retires he loses his status as a partner. The partner is only entitled to receive the value of his/her share in the net partnership assets as calculated on the date of retirement.

36. The record prima facie reveals that the plaintiff is the surviving partner. The winding up procedure has not yet been done and the defendant has a right to claim his share in the assets of the firm. However, he cannot restrain a surviving partner from operating the firm

and maintaining the assets of the firm. Though the defendant has contended that he is single handedly maintaining the house situated in the said property, the photographs reveals that the house is in a dilapidated condition, where the roof is broken and the house is exposed to sun and rain. The photographs also reveal that there is a thicket around the house which reveals that no maintenance is done of the said house as contended by him.

37. In support of his argument Adv. Shri. N. Verenkar for the defendant has relied on the decision of **S.P. Changalvaraya Naidu Vs. Jagannath, reported in AIR, 1994 SC 853 and Mr. Suresh Malappa Shetty Vs. The Special Recovery Officer and ors 2003(2) All MR 254** wherein in the said decision it was held that the party should approach the court with clean hands and should not suppress material facts. However, the said decision is not applicable to the facts of the present case for a very reason that the defendant has failed to show which are the material facts which have been suppressed by the plaintiff.

38. He has also relied on the decision of **Anina D.P. Kaulekar and 5 others Vs. Maria E.V. Dias Sepaco reported in 1990 (1) GLT**

318 wherein it was held that party seeking injunction must establish the exclusive possession on the date of institution of the suit.

39. The records reveal that the suit property and the house were purchased by the partnership firm of which the plaintiff is a partner. Therefore, the plaintiff being a partner has a right to access the said house and has a right to ownership being a partner and therefore the said decision is not applicable to the facts of the present case.

40. Adv. Shri. N. Verenkar has also relied on the decision of **Shri. Denny Fernandes Vs. Shri. Francisco Souza reported in 1997 (2) GLT 119** wherein it was held that at the time of determination of an application for temporary injunction the factum of possession would be relevant factor.

41. As discussed above the said decision is not applicable to the facts of the case as the asset is of the partnership firm and every partner has a right to the assets of the firm.

42. It is pertinent to note that the defendant himself has contended in the written arguments that he is a co-owner in physical co-

occupation and co-possession of the suit property and the house existing therein. This statement itself establishes that the defendant is not the exclusive owner in possession of the suit property and the suit house. The plaintiff has contended that the defendant has dumped material in the suit property and was also in the process of alienating the suit property. The records prima facie reveal that the defendant has retired from the partnership firm and therefore cannot interfere into the day to day management of the firm. The plaintiff has prima facie established that the suit property and the suit house is in a neglected condition and if not preserved will be damaged further. So also if the suit property is alienated or any changes are done it will render the suit infructuous and lead to multiplicity of proceedings. The plaintiff has further prima facie established that the defendant has illegally without following the due process of law restrained her access to the suit property and the suit house existing therein by installing a lock. The act of the defendant has restrained the plaintiff from accessing the house, cleaning and repairing the said house. Therefore, the plaintiff has made out a prima facie case and accordingly point no. 1 is decided in the affirmative.

As to Point No. 2:-

43. The court has to see in whose favour the balance of convenience would tilt. The balance of convenience in the present case tilts in the favour of the plaintiff especially in view of the fact that the plaintiff has prima facie established that the defendant has neglected the maintenance of the suit property and the house situated therein and has also restrained the plaintiff from entering the suit property and the suit house. The court has to see whether the balance of convenience tilts in favour of the plaintiff.

44. In **Anwar Elahi vs Vinod Misra And Anr**, reported in **1995 (35) DRJ 341**, it was held that *‘Balance of convenience means that comparative mischief or inconvenience which is likely to issue from withholding the injunction will be greater than that which is likely to arise from granting it. In applying this principle, the Court has to weigh the amount of substantial mischief that is likely to be done to the applicant if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted.’*

45. The discretion in granting or refusing injunction must be exercised judicially and not arbitrarily and the discretion when applied to a Court of law means discretion guided by law. It must be governed by rule and not humour. It must not be arbitrary, vague or fanciful but legal and regular. Where the granting of injunction or refusing it depends upon questions of fact and also conflicting evidence the relief is to be refused.

46. In the present case the plaintiff has established that the balance of convenience tilts in her favour as if injunction is not granted injury would be caused to her which would be greater than the injury caused by refusal of the injunction and hence the point no.2 is decided in the affirmative.

As to Point No.3.

47. In order to obtain an order of temporary injunction it is incumbent upon the plaintiff to establish that irreparable loss would be caused to her that cannot be compensated in terms of money. The plaintiff has prima facie shown that she has been restrained from accessing, maintaining and repairing the house existing in the suit property. In the case at hand the plaintiff has made out a prima facie case and the balance

of convenience tilts in her favour and therefore if injunction is not granted irreparable loss or injury would be caused to her which cannot be compensated in terms of money. Hence, the point no.3 is decided in the affirmative.

48. However, it is to be noted that the observations made while deciding the present application are based on the prima facie finding of this Court and the plaintiff will have to establish her case on merits and the observations made herein are not binding on the final decision which will be passed on merits.

49. Hence, I pass the following order:-

ORDER

The application at Exh.D-3 is partly allowed.

a) The defendant, his agents, servants, family person or any person acting on his behalf are restrained from carrying out any construction in the suit property till the suit is decided on merits.

b) The defendant is directed to remove the new lock installed by him over the existing common lock which is over the main door of the house situated in the suit property and is directed to provide

access of the suit property and the house existing therein to the plaintiff within a period of 15 days from today.

c) The defendant his agents, family members or any person acting on his behalf is restrained from selling, leasing, mortgaging, alienation or creating third party rights in the suit property and the house existing therein.

The defendant is directed to remove the construction material from the suit property within a period of 15 days from today.

Pronounced in the open Court.

Bicholim.

Dated: 07.08.2026

(Anuradha Andrade)
Civil Judge Senior Division,
'A' Court, Bicholim.

Rls*