

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO.12 of 2015**

MRS. JAYASHRI N. RAHEBHOSLE
alias BIMABAI RAUJI RANE SARDESSAI,
wife of Shri Nanasaheb Raje Bhosle,
71 years of age, married, housewife,
Indian National, r/at Krashikesh,
Plot No.114, PDA Colony, Alto
Porvorim, Bardez, Goa 403 521
through POA Holder Shri Bhupendra
Singh Rajebhosale .. Appellant

V/s

1. VIJAY RAGHOBHA GAONKAR,
son of Raghoba Gaonkar,
major of age, married,
r/o H. No.226, Paltadwado,
Maulinguem (North), Bicholim,
Goa.
2. VILLAGE PANCHAYAT OF ONA,
MAULINGUEM, KUDCHIREM
through its Secretary, Maulinguem,
Kudchirem, Bicholim, Goa
3. STATE OF GOA
through the Chief Secretary,
Secretariat, Porvorim, Bardez, Goa. .. Respondents

Mr. Jagannath Jayant Mulgaonkar, Advocate for the appellant.

Mr. Ryan Menezes, Advocate for the respondent no.1.

Mr. D. Gaonkar, Advocate for the respondent no.2.

Mr. Emerico Estevam Afonso, Government Advocate for the
respondent no.3.

CORAM :- C. V. BHADANG, J.

Date : 6th July, 2015.

ORAL JUDGMENT :

Admit. Learned Counsel for the respective respondents waive service.

2. Heard finally with consent.

3. The dispute is about the construction of a house by the first respondent. The appellant/ plaintiff has filed a suit against the respondents, seeking injunction, restraining the first respondent from effecting the construction and also seeking a direction to the second and third respondents for taking action against the first respondent. It appears that the learned trial Court had passed an order, by which the parties were directed to maintain status-quo. That order was passed on 03/01/2014. Subsequently, the appellant filed an application exhibit 29 on 09/04/2014, purportedly under Order XXXIX, Rule 2A of the Civil Procedure Code (C.P.C., for short) for taking action against the first respondent for breach of order of status-quo. It appears that another application at exhibit 33 was filed for similar relief. The record shows that the learned Trial Court had called for the

bailiff's report thrice and the bailiff's report dated 19/04/2014, 08/05/2014 and 02/09/2014 are there on record along with the photographs of the construction made.

4. It is submitted on behalf of the appellant that the learned Trial Court has not considered the bailiff's reports. It is submitted that although the report of the private surveyor appointed by the appellant was disputed, there was no objection taken insofar as the bailiff's reports are concerned. It is also submitted that without going to the aspect whether there was in fact a breach of the order of status-quo, the applications have been rejected by the impugned order dated 03/01/2015.

5. It is submitted by the learned Counsel for the first respondent that the correctness of the bailiff's reports was disputed and there was no breach of the order of status-quo.

6. The learned Counsel for the second and third respondents had nothing much to say as the dispute is essentially between the private parties.

7. I have heard Shri Mulgaonkar, the learned Counsel for the appellant, Shri Menezes, the learned Counsel for the

respondent no.1, Shri Gaonkar, the learned Counsel for the respondent no.2 and Shri Afonso, the learned Counsel for the respondent no.3.

8. On hearing the learned Counsel for the parties and on perusal of the impugned order as also the copies of the bailiff's reports and the photographs produced on record, I find that the applications exhibit 33 and 29 will have to be sent back to the learned Trial court, for disposal afresh in accordance with law.

9. It does appear from the comparison of three bailiff's reports that prima facie, the construction had proceeded. The last bailiff's report would, prima facie, show that the construction is practically complete. In such circumstances, it would be appropriate for the learned Trial Court to decide the applications afresh, after giving appropriate opportunity to the parties of being heard.

10. In such circumstances, the appeal is allowed. The impugned order dated 03/01/2015 is hereby set aside. The applications exhibit 33 and 29 are sent back to the learned Trial Court, for disposal in accordance with law.

11. The rival contentions of the parties on merits are kept open.

12. The appeal is disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA