

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 34 OF 2006**

1. Shri. Datta Laxman Naik
Son of Laxman Shanu Naik,
major of age, residing at
House No.403, Comba,
Margao, Goa,

2. Smt. Pushpa Datta Naik
Wife of Datta Laxman Naik,
major of age, residing at
House No.403, Comba,
Margao, Goa

..... Appellants/
Original Plaintiffs

V/s.

1. Shri. Damodar Laxman Naik,
Son of Laxman Shanu Naik
major of age,
residing at House No. 403,
Comba, Margao, Goa

2. Smt. Pramila Damodar Naik,
wife of Damodar Laxman Naik,
major in age, residing at
House No.403, Comba,
Margao, Goa.

3. Shri. Rajiv Damodar Naik,
Son of Damodar Laxman Naik,
residing at House No.403,
Comba, Margao, Goa.

4. Shri. Sham Damodar Naik,
Son of Damodar Laxman Naik,
major in age, residing in H. No.403,
Comba, Margao, Goa.

5. Shri. Ramnath Laxman Naik,
major in age,

residing at Eliza Co-operative Housing
Society Ltd., Plot No.51, Room No.101,
RSC 25, Corai, Borivili, West,
Mumbai – 400 092.

6. Margao Municipal Council,
through its Chief Officer,
Margao, Goa.

.....Respondents/
Original Defendants

Shri Sudesh Usgaonkar, Advocate for the appellants.

Shri C. A. Coutinho, Advocate for respondents No.1 to 4.

CORAM :- F.M. REIS, J.

Date : - 10th April, 2015.

ORAL JUDGMENT :-

Heard Shri Sudesh Usgaonkar, learned Counsel appearing
for the appellants and Shri C. A. Coutinho, learned Counsel appearing
for the respondents No.1 to 4.

2. The above appeal came to be admitted by an order dated
21st September, 2007, on the following substantial questions of law :

(a) Once the Courts below held that the suit house was
a joint property of which the appellants and the

respondent No.1 were co-owners, merely because one co-owner uses a particular part of the common property exclusively that by itself is no difference nor can it mean that he has no rights to the other parts of the property. Whether the Courts below failed to consider the above principle of law ?

(2) Whether the Courts below were right in holding that the act of the respondent No.1 of demolishing the existing toilet was justified only because the Municipal Authorities directed him to demolish the same by issuing notice dated 13/03/1990 when the new toilet was constructed inside the house and demolished toilet was out side the house and the respondent No.1 admitted in his deposition that he was directed to reconstruct a new WC at the same place when the pig type toilet was existing ?

3. Shri Sudesh Usgaonkar, learned Counsel appearing for the appellants has submitted that the property is not divided nor partitioned by metes and bounds and, as such, according to him, the construction of a wall, a toilet and a kitchen by respondents, without the consent of the appellants, is not at all justified. The learned Counsel further points out that such an exercise would lead to a forced partition between the

appellants and the respondents, detrimental to the interest of the parties.

4. On the other hand, Shri Coutinho, learned Counsel appearing for the respondents has pointed out that the constructions which have been put up by the respondents are essentially in the nature of maintaining the portion occupied by the respondents and that the respondents shall not claim any equities for putting up such constructions at the time of partition.

5. After hearing the matter for sometime, the appellants and the respondent No.3 who are present in person along with their respective Advocates, pointed out that the above appeal may be disposed of by consent on the following terms :

(I) The respondents have no objection in case the appellants construct a new toilet-cum-bathroom in the Courtyard as shown in Exhibit 19/D, adjoining the wall shown by letter PQ, of not more than 4 x 2 metres, at the exclusive costs of the appellants herein.

(II) Both the parties shall not claim any equities in their favour in respect of the disputed constructions put up by the respondents nor

the construction allowed to be put up by the appellants in the aforesaid terms.

(III) The appellants and the respondents shall not carry out any further construction activities in the disputed property without the consent of each other as the disputed property and house therein shall continue to remain common.

The substantial questions of law are answered accordingly. Both the learned Counsel point out that the parties to the above appeal accept the above consent terms

6. In view of the above, accepting the said consent terms, the appeal stands disposed of. Liberty to the parties to apply.

F.M. REIS, J.

ssm.