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IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 4 OF 2009

1. Smt. Ismeria Tereza Antao Pereira,
major in age,
married, housewife,
and her husband
2. Shri Jose Antonio Braganza,
major in age, service,
Both residents of House No.381,
Indona, Davorlim,
Navelim, Salcete Goa. ... Appellants

V e r s u s

1. Shri Domingo Colaco,
major in age,
married, resident of House No.66,
Indona, Davorlim,
Salcete Goa, and
2. Shri Satchit Gajanana Naik,
major in age,
son of Gajanana Naik,
married, businessman,
resident of House No. 256,
Ward No.12,
Near Old Survey Office,
Borda, Margao Goa. ... Respondents

Mr. D. Pangam, Advocate for the appellants.

Mr. C. A. Coutinho, Advocate for the respondents.

CORAM : F. M. REIS, J

DATE : 5th March, 2015

ORAL JUDGMENT :-

Heard Mr. D. Pangam, learned counsel appearing for

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the appellants and Mr. C. A. Coutinho, learned counsel appearing for the respondents.

2. The above appeal came to be admitted by an order dated 04.03.2009.

Whether the Courts below fell in error in refusing to grant injunction in favour of the plaintiff, who is held in settled possession of the property particularly when the defendant/respondent did not have any right, title and interest in the property ?

3. Mr. Pangam, learned counsel appearing for the appellants has pointed out that both the Courts below have erroneously refused the relief sought by the appellants on the ground that the appellants have not established title over the disputed property. The learned counsel further pointed out that in the sale deed executed in favour of the defendant no.2 there is no specific clause therein nor reference about the area of 1000 square metres in favour of the appellants. The learned counsel further pointed out that the learned Lower Appellate Court has rightly come to the conclusion that as far as the said area of 1000 square metres is concerned, the appellants can be said to be in settled

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possession of the property. The learned counsel further submits that the respondents are trespassers in respect of the disputed property and as such according to him the Courts below ought to have granted the relief in favour of the appellants. The learned counsel further pointed out that once the appellants are held to be in settled possession, they are entitled to protect the possession against the whole world and as such the relief of injunction was justified. The learned counsel further submits that the respondents are claiming right on the basis of lease created in favour of Rosalina who has no right to the disputed property as according to him Rosalina was merely a lessee. The learned counsel further pointed out that the learned Lower Appellate Court has erroneously come to the conclusion that the appellants have failed to establish their title to the property when according to him it is settled position that even a settled possession can be protected and as such the learned counsel submits that the substantial question of law be answered in favour of the appellants.

4. On the other hand, Mr. C. A. Coutinho, learned counsel appearing for the respondents has supported the impugned judgment. The learned counsel has pointed out that the respondents are only occupying one structure situated in the

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disputed property which according to him the respondents were in possession even during the lifetime of the said Rosalina. The learned counsel further pointed out that as such the appellants are not entitled to get a blanket relief in a suit for injunction simpliciter. The learned counsel further pointed out that the learned Lower Appellate Court has come to the conclusion that the respondents were carrying out business in one room of the disputed structure and as such this itself shows that the respondents are in possession of the disputed property. The learned counsel further pointed out that both the Courts below have rightly come to the conclusion that the respondents are in possession of the hut and as such granting of any relief to the appellants does not arise. The learned counsel further pointed out that as the fact finding Courts have come to the conclusion that the appellants are not in possession of the entire disputed property the question of seeking a permanent injunction without a consequential relief is not at all justified. The learned counsel as such submits that the above appeal be rejected.

5. I have duly considered the submissions of the learned counsel and I have also gone through the records. The substantial question of law framed by this Court is on the premise that the Courts below have come to the conclusion that the appellants were

in settled possession of the entire area of 1000 square metres. But however, the record reveals that the learned Lower Appellate Court while appreciating the evidence on record has come to the conclusion that the respondent no.1 is in possession of one room of the disputed structure wherein he is conducting the business. The Courts below have also taken note of the entry in the survey records wherein the name of Rosalina is shown in the other rights column as far as the structure is concerned. In such circumstances, the contention of Mr. Pangam, learned counsel appearing for the appellants that the appellants are in possession of the entire area of 1000 square metres which is disputed property cannot be accepted. Once the Court has come to the conclusion that the concerned respondents are in possession of a portion of the suit property, a suit for injunction simpliciter would not be maintainable. On perusal of the reliefs sought by the appellants, I find that the suit has been filed not to interfere with the disputed property. In such circumstances, as there is no relief of restoration of possession, the Courts below were justified to refuse the relief of injunction. No doubt, the issue of title would have to be adjudicated on its own merits in case any of the parties approach the Court. It is now well settled that a relief of permanent injunction cannot be granted in favour of the plaintiff when he is not in possession of the entire suit portion of the

property. In the present case, as already pointed out herein above, the fact finding Courts have come to the conclusion that the concerned respondents are in possession of a portion of the suit property and consequently, the question of granting permanent injunction as claimed by the appellants would not arise at all. In such circumstances, I find that the Courts below were justified to refuse the relief sought by the appellants. Needless to say that the issue of title of both the parties over the disputed property is left open. As such, the appellants would have to take appropriate remedy in accordance with law with regard to the occupation of a portion of the disputed property by the respondents.

6. Subject to the above, no interference is called for in the impugned judgment. The appeal stands accordingly rejected.

F. M. REIS, J

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