

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 74 OF 2007
AND
STAMP NUMBER (APPLN.) 1921/2008

SHRI KASHINATH B. GAONKAR
AND ANOTHER. APPELLANTS

VERSUS

SHRI VASANT LADU PATIL ALIAS
DATTU LADU PATIL AND ANOTHER. RESPONDENTS.

Shri S. D. Lotlikar, Senior Advocate with Shri C. Padgaonkar,
Advocate for the appellants.

Shri R. G. Ramani, Advocate for respondents No.2(a), 2(h), 2(i), and
2(j).

CORAM :- F.M. REIS, J.

Date : - 15th January, 2015.

P.C. :

Heard Shri S.D. Lotlikar, learned Senior Counsel
appearing for the appellants and Shri R.G. Ramani learned,
learned Counsel appearing for the respondents.

2. The above appeal challenges the judgments passed by
the Courts below. In the suit filed by the respondents-original

plaintiffs for injunction, the Courts below came to the conclusion that the respondents are entitled for the permanent injunction, and directed the appellants-original defendants to restrain from interfering with the property Survey Nos. 220/0, 222/1, 222/2, 202/1 and 201/0 of Village Nirankal, Ponda Taluka.

3. Shri Loltlikar, learned Senior Counsel appearing for the appellants has pointed out that both the Courts below have misconstrued the evidence on record to come to the conclusion that the respondents are entitled for the reliefs claimed. The learned Senior Counsel has taken me through the judgments of both the Courts to point out that there is no specific finding about the possession of the respondents over the disputed property. The learned Senior Counsel further points out that the injunction which has been granted, also includes the property survey No.201/0 of village Nirankal. Learned Counsel further points out that though it was the case of the respondents that the suit property included besides the property survey Nos. 220/0, 222/1, 222/2, and 202/1, also the one surveyed under No.221/0, nevertheless in the relief

clause the property survey No.221/0 of village Nirankal was not included and, as such, points out that there are substantial questions of law which arise for consideration of this Court.

4. On the other hand, Shri Ramani, learned Counsel appearing for the respondents has taken me through the judgments of the lower Courts to point out that the Courts below have extensively examined the materials to come to the conclusion that the respondents are entitled for the reliefs granted by the impugned judgments. The learned Counsel, further points out that the property survey No. 201/0 is not included in the relief clause and as such, the contention of Mr. Lotlikar, learned Senior Counsel appearing for the appellants in that regard may be accepted. The learned Counsel, as such, points out that there is no substantial question of law which arises in the above appeal.

5. Upon hearing the learned Counsel and on perusal of the record, the question of examining as to who is in possession of the properties which were subject-matter of the reliefs sought in

the suit would not arise, as both the Courts have concurrently come to the conclusion that the respondents are in possession of the properties referred therein. But, however, as rightly pointed out by Shri. Lotlikar, learned Senior Counsel appearing for the appellants, the property survey No. 201/0 was not part of the relief in the suit and as such, the question of granting any relief with that regard would not arise. Shri Ramani, appearing for the respondents, upon instructions, points out that as far as the relief granted in respect of the property Survey No.201/0, the same may be quashed and set aside. Mr. Lotlikar, learned Senior Counsel appearing for the appellants also points out that both the Courts below have taken note of the fact that there is one structure in the property survey No. 220/0, which is being occupied by the appellants.

6. Considering the said finding, the injunction granted by the Courts below shall operate against the appellants, but, however, as far as said structure existing in the property Survey No. 220/0, the injunction shall not operate as far as occupation of

the appellants in respect of the said structure only, unless evicted in due process of law.

7. As such, the question of interference in the impugned judgments, except to the extent referred to herein above, does not arise at all. Hence I pass the following order.

By consent impugned judgments passed by the Courts below stand modified. The property Survey No.201/0 of village Nirankal of Ponda Taluka stands deleted from the reliefs granted in the impugned judgments. The injunction granted by the Courts below shall stand modified in respect of the said structure located in the property surveyed under No.220/0 in the manner stated above.

Subject to the above, the appeal stands rejected.

8. In view of the dismissal of the second appeal, the Stamp Number (Application) No. 1921/2008 stands rejected.

F.M. REIS, J.

ssm.