

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 54 OF 2015

SHRI. SUDAM GOPAL PEDNEKAR Petitioner

Versus

MR. PAULU @ PAUL D'SILVA

(DECEASED) THROUGH HIS

LEGAL HEIRS AND ANR. Respondents

Shri Ajit R. Kantak, Advocate for the Petitioner.

Coram:- N. M. JAMDAR, J.

Date:- 9th February, 2015

ORAL ORDER :

By this petition the petitioner challenges the order dated 17 May 2014 passed by the District Court, North Goa, Panaji and Civil Judge Junior Division, Pernem rejecting the application for interim relief in the suit filed by the petitioner.

2. The petitioner claims to be the owner in possession of the property bearing no.119/5 of Village Morjim, Pernem Taluka. According to the petitioner, property adjoining 119/4 was partitioned and defendants were allotted portion of the house situated at 119/4. According to the petitioner, the defendants were proceeding to reconstruct the house and in that process were encroaching on Survey No.119/5 without leaving any setback.

3. It is the case of the respondent that the petitioners are claiming title to the property by adverse possession which is yet to be established. According to the respondents they have

not encroached on the property and all the work has been done by obtaining requisite permissions. Both the learned Civil Judge and the learned District Judge did not accept the case of the petitioner for interim injunction and dismissed the applications. The Courts below have taken note that the respondents have obtained permissions from the statutory authorities. Courts have also considered the fact that the claim of the petitioner to the property by adverse possession is yet to be established. The appellate Court found that since the right of the petitioner is yet to be established even assuming setback is not kept he cannot make grievance regarding the same.

4. No error can be found in the approach adopted by the Courts below. Further the learned Counsel for the petitioner is not able to demonstrate that there is immediate threat to right of air and light by not keeping the setback. The construction carried out will be dealt with finally at the time of hearing of the suit. The construction carried out by the respondents will be subject to the final outcome of the suit and considering that the suit is still pending if any construction is carried out during the pendency of the suit, the respondent will not be able to claim any equities thereof. In view of this position no case is made out for interference. The Writ Petition is accordingly rejected.

N. M. JAMDAR, J.

NH/-