

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION NO. 173 OF 2014
IN
SECOND APPEAL NO.128 OF 2013

MR. JOSE DE AFONSO MACHADO (SIN. DEC.)
THROUGH LR'S AND ANR. ... **Applicants**

Versus

JOHN VAZ AND ANR., ... **Respondents**

Mr. Nigel Da Costa Frias, Advocate for the applicants.
Mr. Sandesh D. Padiyar, Advocate for the respondents.

Coram : C. V. BHADANG, J.

Date : 21st July, 2015.

ORAL ORDER :

By this application the respondents / original plaintiffs are seeking a direction against the appellants / defendants to remove the corrugated metal sheets affixed by the appellants on the outer wall of their house.

2] The brief facts are that there is a lane in between the house of appellants and respondents. The respondents had filed a suit claiming that appellants had made certain illegal construction of a wall in the said lane. The trial Court had dismissed the suit. The First Appellate Court had allowed the appeal and decreed the suit in following terms :

Appeal is allowed. The impugned judgment is quashed and set aside. The defendants are directed to demolish the illegal construction carried out by them in the suit lane, restoring the lane to its earlier width so as to allow the monsoons water to flow as they always used to flow earlier. The defendants are

restrained by way of a permanent injunction from constructing anything in the suit lane. The defendants are restrained by way of permanent injunction from allowing the eavesdrops from the defendants' house and the defendants' structures to fall on the plaintiffs' house and even to fall within a distance of 50 cms. from the entire wall of the house of the plaintiffs. So also, the defendants are restrained by way of a permanent injunction from interfering with the plaintiffs' in cleaning up of the drain goes through the said lane and from interfering with the plaintiffs' removal of anything blocking or which may block the free flow of monsoon water."

The original defendants have come up in second appeal.

3] This Court by an order dated 13 February 2014 in Civil Application No.199 of 2013 had partly stayed the impugned judgment and decree to the extent of grant of mandatory injunction of demolition of the illegal construction carried out by the appellants in the suit lane and restoring the same to its earlier condition / width. This Court had also noted that the issue of splashing of the rain water from the eavesdrops from the house of appellants and respondents can be taken care of, if the parties put a half cut PVC pipe (gutter) of the width of 6 inches for the smooth flow of water. The appellants had undertaken to put the half cut PVC pipe and this Court ultimately disposed of the said application as under :

In view of the above, the part of the impugned judgment and order pertaining to mandatory injunction of demolition of the construction in the suit lane and restoration of the lane to its earlier width, is stayed until the final disposal of the Second Appeal, whereas with regard to the eavesdrops, the observations made above shall be followed.

4] It is now contended by the respondents that the appellants have put a canopy of corrugated sheets, which practically extends to the house of respondents and covers the entire lane. It is prayed that the said construction is in breach of the order of this Court dated 13 February 2014 in Civil Application No.199 of 2013. The respondents are therefore praying for a direction to the appellants, to remove the same.

5] The learned counsel for the respondents has pointed out certain photographs in order to show that the new corrugated iron sheets have been put extending over the suit lane. The learned counsel for the appellants on the contrary submits that there was already a old structure existing and the same has been replaced by new sheets, in order to facilitate the putting of half cut PVC pipe (gutter). The learned counsel has also pointed out Para.11 and 12 of the plaint in order to submit that the respondents had come with a case that such sheets were already there. This is countered on behalf of the respondents saying that the suit was basically for removal of an illegal wall erected by appellants as referred to the Para 7 of the plaint.

6] On hearing the learned counsel for the parties, it appears that there is a dispute, as to whether the corrugated sheets in respect of which now a direction for removal is sought, were already existing / replaced, in lieu of the earlier structure or they are in the nature of a new structure

erected after passing of the interim order by this Court. Obviously, such a disputed question cannot be gone into in an application of the present nature, at this stage. The fact remains that this Court had only partly stayed the impugned judgment and decree to the extent of mandatory injunction is concerned. It is submitted by the learned counsel for the respondents that till today the respondents have not filed application for execution of the decree. It is submitted that the respondents would file an execution application of the decree to the extent the same is not stayed by this Court.

7] In view of the rival submissions, I do not find that the application as is framed and filed can be entertained. However, this will be subject to liberty to the respondents, to file an execution application for execution of the impugned judgment and decree (except the mandatory injunction part), if so advised. It is made clear that if such execution application is filed, the executing Court would be at liberty to execute the part of the decree (except the mandatory injunction part), and in view of the order dated 13 February 2014 in Civil Application No.199 of 2013. All the rival contentions of the parties are kept open. The civil application is disposed of in the aforesaid terms.

C. V. BHADANG, J.

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