

IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL APPLICATION NO. 241 OF 2015
IN
APPEAL FROM ORDER NO. 61 OF 2015.

SMT.MILAGRINA PEREIRA
E XAVIER AND 5 ORS.

... Appellants

Versus

SHRI ANTONIO WALTER
DO ROSARIO COLACO @
WALTER COLLACO AND 5
ORS.

... Respondents.

Mr. J. E. Coelho, Periera, Senior Advocate with Mr. S. Karpe,
Advocate for the appellants.

Mr. Sudesh Usgaonkar and Ms. R. Pereira, Advocates for the
respondents.

Coram:- K. L. WADANE,J.

Reserved on:5th December, 2015.

Pronounced on :7th December, 2015.

ORDER

Heard Mr. J. E. Coelho Pereira, Senior Advocate
appearing for the applicant and Mr. Sudesh Usgaonkar, learned
Counsel appearing for the respondents.

2. The applicants are claiming to be lessees over the
suit property. According to them, they were doing business of
saw mill in a structure existed over the suit premises.

3. In support of their contentions, Mr. Pereira, learned

Senior Counsel has referred and pointed out certain electricity bills and the receipts of the house tax and the lease deed. Such electricity bills and the house tax receipts are on record.

4. As against this, Mr. Sudesh Usgaonkar, learned Counsel appearing for the respondents has argued that the petitioners have abandoned the suit premises long back. Therefore, they are not in possession and same is also clear from the prayer made by the plaintiffs/petitioner in the plaint to restore the possession of the suit premises.

5. Considering the arguments advanced by both the parties, apparently it is seen that the petitioners were lessees in possession of the suit property for some time and according to Mr. Pereira, even after destruction of the construction, the relation between the petitioners and the respondent nos. 1 to 4 is continued as lessees and lessors.

6. Mr. Usgaonkar, learned Counsel appearing for the respondents has argued that there is difference of boundaries given by the plaintiffs/petitioner in the plaint and the documents, particularly boundaries towards southern side.

7. Considering the arguments advanced by both the sides and on perusal of the impugned order, it appears that the

petitioners are not in possession of the disputed property and even now respondent/defendant nos. 5 and 6 who are stated to be bonafide purchasers of the suit property have started construction. On perusal of the photographs, it appears that respondent/defendant nos.5 and 6 have made a construction upto considerable height and according to Mr. Usgoankar, the petitioners have filed a suit after about two years. The question as to whether relation of the petitioners and the respondent nos. 1 to 4 as lessees and lessors still exist or otherwise has to be considered by the learned Trial Court.

8. In such circumstances, the respondents are hereby directed not to create any third party interest over the suit property and they should not occupy the building without prior permission of this Court, till the disposal of the appeal.

9. Application stands disposed of.

K. L. WADANE, J.

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