

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**CIVIL APPLICATION NO. 256 OF 2015**

**IN**

**FIRST APPEAL NO. 105 OF 2015.**

SHRI ARMANDO SERRAO AND

ANR.

... APPLICANTS.

Versus

THE VILLAGE PANCHAYAT

OF SERNABATIM VANELIM

AND 5 OTHERS.

... RESPONDENTS.

Mr. S. G. Desai, Senior Advocate with Mr. S. Keny, Advocate for the applicants.

Ms. P. Kamat, Additional Government Advocate for the respondent nos. 2 and 6.

Mr. Sudin Usgaonkar, Senior Advocate with Mr K. Padgaonkar, Advocate for the respondent nos. 3 and 4.

**Coram:- K. L. WADANE,J.**

**Reserved on:22<sup>nd</sup> December, 2015.**

**Pronounced on :23<sup>rd</sup> December, 2015.**

**ORDER**

Heard Mr. S. G. Desai, learned Senior Advocate appearing for the applicants, Ms. P. Kamat, learned Additional Government Advocate appearing for the respondent nos. 2 and 6 and Mr. Sudin Usgaonkar, learned Senior Advocate appearing for the respondent nos. 3 and 4.

2. The applicants have filed First Appeal No. 105/2015 which is admitted by this Court on 13.10.2015. The applicants have prayed for temporary injunction during the pendency of

the First Appeal on the ground that the respondent nos. 3 and 4 have made illegal construction over the plot no. 2 of survey no. 61/5. The area of the said plot shows 260 square metres as indicated in the Partition Deed. However, while obtaining statutory licences and permissions, the respondent nos.3 and 4 have misrepresented to the authorities that the area of the plot no. 2 as admeasuring 350 square metres. It was misrepresented so without deducting an area of 90 square metres which is a common suit access. The respondent nos. 3 and 4 have obtained a licence and permissions by misrepresenting and by showing common suit access is part of their property. It is further stated that after obtaining such permissions/licences, the respondent nos. 3 and 4 have made encroachment over the common access and made certain construction. Such construction is on the boundary line of plot no. 2 and they have not left required set back of 3 metres. Further it is stated that due to the illegal construction of the respondent nos. 3 and 4 the common access between the plot of the applicants and the respondent nos. 3 and 4 is blocked. Therefore, the applicants have prayed to grant interim relief in terms of prayer clauses(a) and (b).

3. Ms. P. Kamat, learned Additional Government Advocate has argued that the statutory permissions granted by the authorities are as per the plan submitted by the respondent nos. 3 and 4 that too also subject to the orders that may be

passed by the Civil Court.

4. As against this Mr. Sudin Usgaonkar, learned Senior Counsel has argued that the respondent nos. 3 and 4 have denied the alleged encroachment upon common access and the alleged illegal construction over the plot no. 2. During the course of arguments he has stated that the respondent nos. 3 and 4 have not illegally constructed and their construction is as per the plan submitted by them that too after obtaining necessary permissions from the concerned authorities.

5. I have perused the records and after considering the rival contentions of both the parties and upon hearing both sides, it reveals that the construction over the plot no. 2 is already over and concerned authority has issued occupancy certificate in favour of respondent nos. 3 and 4 regarding ground floor. From the affidavit of one Mr. Ranjit Borkar, officer of the Town Planner, Town and Country Planning Department, South Goa, it appears that the respondent nos. 2 had issued NOC for house construction prior to implementation of Goa Land Development Building Construction Regulations-2010, the required set back are maintained in the approved plan. He further states in the affidavit that no encroachment in the suit access other than projection of balcony/stair case landing. The completion certificate was issued only for ground floor on

22.12.2014 with the condition that completion order will be withdrawn or declared null and void incase Hon'ble Court/authority holds that the projection on the suit access are declared as obstruction to the suit access. He further states that the respondent nos. 2 has only granted completion certificate for ground floor and not for the first floor.

6. From the addition affidavit filed on behalf of the respondent nos. 3 and 4, it is stated by the respondent no.3 that upon obtaining occupancy certificate, water and electricity connection pertaining to the ground floor in the suit structure they are also in occupation of the said floor in addition to the old house. So from the record it reveals that the construction of the ground floor is complete and concerned authority has granted occupancy certificate.

7. Mr. Desai, learned Senior Counsel appearing for the applicants has argued that the respondent nos. 3 and 4 have not physically occupied the ground floor of the plot no. 2, therefore, they be restrained from occupying the said premises.

8. However, the respondent no. 3 has made it clear in additional affidavits that they have occupied the said floor in addition to the old house. So from the contentions of both the parties, it reveals that the construction of the ground floor is

over, occupancy certificate is issued in favour of the respondent nos. 3 and 4 and now the respondent no. 3 says that they have occupied means they are residing in the plot no. 2 on the ground floor.

9. Considering the arguments advanced by both the sides, it is material to note that the main dispute between the parties is in reference to illegal construction made on the common access between the parties and from the affidavit on behalf of the respondent no. 2 it reveals that the officer on behalf of the respondent no. 2 has contended that there is no encroachment in the suit access other than projection of the balcony and lending of the stair case.

10. Whether the construction is illegal or otherwise is pending for consideration before this Court in First Appeal.

11. Conditional construction permission is granted by the authority subject to the orders by this Court, further more the alleged illegal construction is subject to the orders of this Court that will be passed in the matter. In spite of the fact and reliefs claimed by the applicants, it appears that the respondent no. 2 has already granted occupancy certificate of ground floor and respondent nos. 3 and 4 have occupied the ground floor, therefore, at this stage no case is made out to grant interim

relief interms of prayer clauses (a) and (b).Therefore,  
application stands rejected.

12. Application stands disposed of.

K. L. WADANE, J.

vn\*