

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 377 OF 2016

Shri Ulhas Naik,
S/o late Sacarama Naik,
age 73 years, married, driver,
R/o. H. No.78,
Patto, Ribandar, Tiswadi, Goa. Petitioner.

V e r s u s

1. Shri Pundalik Narayan Kambli,
S/o. Late Narayan Kambli,
Major of age, married, unemployed,
Indian National,
(Since deceased through legal representatives)

1 a) Smt. Anjani Pundalik Kambli,
widow of late Pundalik Narayan Kambli,
age about 74 years, housewife,

1b) Shri Kuldeepak Pundalik Kambli,
son of late Pundalik Narayan Kambli,
major of age, unmarried, service,

1c) Ms. Dyandevi Pundalik Kambli,
daughter of late Pundalik Kambli,
age about 36 years, unmarried.

All residents of H. No.80/5,
Confrinchem Bhat, Patto,
Ribandar, Ilhas, Goa.

2) Shri Kuldeepak Pundalik Kambli,
son of Pundalik Narayan Kambli,
major of age, unmarried, service,
Indian National.

3) Shri Sainath Deu Kambli,

son of Deu Kambli, major of age,
married, driver, Indian, National,

All residents of H. No.80/5,
Confrinchem Bhat, Patto,
Ribandar, Ilhas, Goa.

..... Respondents

Mr. Sakharay Ulhas Naik, Advocate for the Petitioner.

Ms. Asha Desai, Advocate for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 25TH JULY, 2016.

ORAL JUDGMENT :

Rule. The learned counsel for the respondents waives service. Heard finally by consent of the parties.

2. The petitioner has filed Regular Civil Suit No.135/2012/C which is pending before the learned Civil Judge Junior Division at Panaji. The petitioner is praying for a declaration that the respondents/defendants have no right to construct a RCC slab structure or to illegally extend the southern wall between the houses of the petitioner and the respondents. The petitioner is also seeking permanent injunction restraining the respondents or anybody on their behalf, from

carrying out the work of putting RCC slab and from illegally extending the southern wall in the demarcated area. A further mandatory injunction is claimed directing the respondents to remove the laterite stone wall etc.

3. It appears that the respondents had raised a counter claim contending that the petitioner has constructed a palatial house without obtaining necessary permission and without the no objection certificate of the bhatkar. The respondents are seeking certain reliefs in respect thereof. The said counter claim has since been rejected under Order 7 Rule 11 of C.P.C., as being barred by limitation. Indisputably, the said order is subject matter of challenge at the instance of the respondents in Regular Civil Appeal No.17/2016.

4. It appears that the Trial Court has initially granted ad-interim injunction in favour of the petitioner which was subsequently vacated which was challenged by the petitioner in appeal. In appeal, the petitioner sought an amendment for bringing the fact about the grant of the permission by the

Planning and Development Authority, and about the order passed by the Appellant Authority by which the notice of demolition issued by the Municipal Corporation at Panaji, has been set aside. The appellate court had allowed the amendment. It further appears that the Appellate Court has granted limited temporary injunction, in favour of the petitioner.

5. Before the Trial Court the petitioner sought amendment of the plaint along with leave for production of the documents. The amendment sought is by addition of paras 4(a) and 4(b) as under :

4(a) the said reconstruction was done by the plaintiff by obtaining permission/order of development u/s 44 of the Town and Country Planning Act, 1974 dated 27/03/2008 issued by the North Goa Planning & Development Authority.

4 (b) That by order dated 13/09/2012 the Dy. Commissioner of the Corporation of City of Panaji directed demolition of the plaintiff's structure. The said order was challenged by the plaintiff before the appellate Authority

by filing an appeal which was registered as municipal appeal no.30/2012 and now by order dated 13/06/2014 the appellate Authority has quashed and set aside the order dated 13/09/2012 passed by the Dy. Commissioner of Corporation of City of Panaji.

The documents sought to be produced are the permission granted by the North Goa Planning and Development Authority on 27/3/2008 and the order passed in Municipal Appeal on 13/6/2014.

6. The learned Trial Court has rejected the application for amendment and production of the documents on the ground that these facts relate to the counter claim and not the suit and the counter claim having been rejected neither the amendment nor the production of the documents could be permitted.

7. I have heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. It is true

that in the suit, the dispute is not about the alleged illegal construction carried out by the petitioner. However, the fact remains that the respondents have raised a counter claim contending that the construction of the house by the petitioner is unauthorized i.e. without obtaining the necessary licence and the NOC of the bhatkar and further reliance is placed on the demolition notice issued by the Municipal Corporation of Panaji. It is further undisputed that the appeal filed by the respondents challenging the order of rejection of the counter claim is pending and thus in the event the appeal is allowed, the documents as sought to be produced and the amendment would be relevant. In any case considering the nature of the contention raised in the written statement, and as the amendment is partly based on subsequent events about the setting aside of the demolition notice by the Municipal Appellate Tribunal, I find that the same can be allowed. Hence the following order is passed:

O R D E R :

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The petitioner is permitted to amend the plaint and

produce the documents as sought.

(iv) Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

AP/-