

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 74 OF 2016

IN

SECOND APPEAL NO. 77 OF 2008

MS. KUSUMA MANGUESH TIRODKAR ALIAS
KUSUMA MANGUESH PEDNEKAR AND 5
ORS.,

... Applicants

Versus

MR. DILIP SATARDEKAR (DEC) THR.
HIS LRS. AND ANR.,

... Respondents

Shri J.E. Coelho Pereira, Senior Advocate with Shri Vledson Lucio
Braganza, Advocate for the Applicants.
Shri Sudesh Usgaonkar, Advocate for the Respondent No.2.

Coram:- F. M. REIS, J.

Date:- 29th April, 2016

P.C.:

Heard Shri J.E. Coelho Pereira, the learned Senior Counsel
appearing for the applicants and Shri Sudesh Usgaonkar, the learned
Counsel appearing for the respondent no.2.

2. This is an application filed by the applicants on the ground that
immediately after the ex-parte judgment came to be recalled the
respondent no.2 abusively and without any right have started a
reconstruction in the disputed portion admeasuring an area of 31
square metres by demolishing a wall and attempting to put up RCC
columns and a slab therein. As such, an application came to be filed
to direct the respondents to maintain status quo and not to make any

construction in the disputed portion admeasuring an area of 31 square metres.

3. Shri J.E. Coelho Pereira, the learned Senior Counsel appearing for the applicants has vehemently argued that the Courts below have given a finding that the applicants are the owners of the property and have refused the relief of restoration of possession only on the ground of limitation. The learned Senior Counsel further points out that without any right the respondent no.2 immediately after an ex-parte judgment was recalled started interfering with the disputed portion of the land and carrying out construction activity therein. The learned Senior Counsel further submits that as the disputed portion belongs to the applicants the question of carrying out any construction in the disputed property is not at all justifiable and, as such, the respondent no.2 be directed to maintain status quo and not carry out any construction activity in the subject property.

4. On the other hand, Shri Sudesh Usgaonkar, the learned Counsel appearing for the respondent no.2 has submitted that as the external wall of the suit house was in a dilapidated condition the respondent no.2 was forced to reconstruct such wall as there was a danger that such wall at any moment may collapse. The learned Counsel further points out that the wall which is being reconstructed is within the original plinth area of the house and, as such, according to him there is no encroachment in the property of the applicants. The learned

Counsel points out that such work was necessitated in view of the request made by the respondent no.2 to examine the stability of the subject wall and, as such, on account of such extreme exigencies the respondents were forced to carry out such activity. The learned Counsel further points out that in any event as the suit filed by the applicants is for restoration of possession no prejudice would be caused to the applicants as according to him in case the applicants succeed in getting the relief in the suit the respondent no.2 shall not claim any equities and would be liable to restore such possession to the applicants after demolishing any such construction. The learned Counsel has thereafter taken me through the plans which are part of the records to point out that the construction activity of the respondent no.2 is within the plinth area and that the RCC columns are being put up to give more support to the disputed construction.

5. Shri J.E. Coelho Pereira, the learned Senior Counsel however has disputed the contentions of Shri Usgaonkar and submitted that there was no danger to the subject wall and, as such, according to him the question of changing the status quo when the matter is fixed for hearing is an abusive act on the part of the respondents. The learned Senior Counsel, as such, points out that the relief sought by the applicants be granted.

6. Upon hearing the learned Counsels and on perusal of the records,

I find that the respondents are not at all justified to carry out any such works without seeking permission of this Court specially when the matter was already fixed for final hearing. In fact, considering the conduct of the respondent the relief sought by the applicants ought to have been granted as both the Courts below have rendered the finding of ownership in favour of the applicants.

7. But, however, in the peculiar facts and circumstances of the case and looking into the nature of the existing structure as noted from the photographs produced on record, I find that in the interest of justice, it would be appropriate that the respondents should be permitted only to reconstruct the demolished wall with the same material as was existing prior to such demolition. Both the learned Counsels pointed out that such wall would be mud wall with laterite stone without any cement therein.

8. In such circumstances, the respondents are restrained from carrying out any construction besides erecting the said mud wall with laterite stones on the same location where it was existing prior to such demolition. The respondents shall also give an undertaking to this Court that such wall being reconstructed shall be demolished in case any adverse order is passed against the respondent no.2 at the time of the final disposal of the suit on merits and that the respondent no.2 shall not claim any equities on such grounds. Apart from the said repairs of the wall, the respondents are restrained from carrying

out any construction activity in the disputed portion admeasuring 31 square metres or to put up any RCC columns or slabs over the said disputed portion of the property.

9. Application stands disposed off.

F. M. REIS, J.

NH