

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 574 OF 2016

- 1 Shri Prabhakar Bombo Velip,
Son of late Shri Bombo Velip,
Age about 42 years,
Agriculturist, Resident of H.
No. not known,
Bupar, Gaodongrem,
Canacona Goa.
- 2 Shri Katu Bhamto Velip,
Son of late Shri Bhamo Velip,
Age about 61 years,
Agriculturist, Resident of H.
No. not known,
Bupar, Gaodongrem,
Canacona Goa.
- 3 Shri Narayan Bhamoto Velip,
Son of late Shri Bhamto Velip,
Age about 58 years,
Agriculturist, Resident of H.
No. not known,
Bupar, Gaodongrem,
Canacona Goa.
4. Shri Barklo Bhamto Velip,
Son of late Shri Bhamto Velip,
age about 55 years,
Agriculturist, Resident of H.
No. not known,
Bupar, Gaodongrem,
Canacona Goa.
5. Shri Kusht Bhamto Velip,
Son of late Shri Bhamto Velip,
Age about 60years,
Agriculturist, Resident of H.
No. not known,

Bupar, Gaodongrem,
Canacona Goa.

6. Shri Mhalgo Paik Velip,
Son of Shri Paik Velip,
Age about 37 years,
Agriculturist, Resident of H.
No. not known,
Bupar, Gaodongrem,
Canacona Goa.
7. Shri Rajendra Paik Velip,
Son of Shri Paik Velip,
age about 35 years,
Agriculturist, Resident of H.
No. not known,
Bupar, Gaodongrem,
Canacona Goa.

..... Petitioners/Ori
ginal
Defendants

V e r s u s

1. Shri Kusht Mhalgo Velip,
Son of late Shri Mhalgo Jiblo
Velip,
age about 58 years,
Agriculturist, Resident of H.
No.192,
Bupar, Gaodongrem,
Canacona Goa.
2. Shri Ghiru Mhalgo Velip,
Son of late Shri Mhalgo Velip,
age about 55 years,
Agriculturist, Resident of H.
No.192/1,
Bupar, Gaodongrem,
Canacona Goa.
3. Shri Giblo Mhalgo Velip,
Son of late Shri Mhalgo Velip,
age about 49 years,

Agriculturist, Resident of H.
No.192/2,
Bupar, Gaodongrem,
Canacona Goa.

4. Shri Arjun Mhalgo Velip,
Son of late Shri Mhalgo Velip,
age about 47 years,
Agriculturist, Resident of H.
No.192/3,
Bupar, Gaodongrem,
Canacona Goa.

5. Shri Ghurko Mhalgo Velip,
Son of late Shri Mhalgo Velip,
age about 41 years,
Agriculturist, Resident of H.
No.192/4,
Bupar, Gaodongrem,
Canacona Goa.

..... Respondents/
original
defendants

Shri S. Usgaonkar, Advocate for the Petitioners.

Mr. R. G. Ramani, Advocate for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 14th October, 2016.

ORAL JUDGMENT:

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

2. The petitioners are the original defendants and the respondents are the plaintiffs in Regular Civil suit No.1/2014 pending before the learned Civil Judge Junior Division at Canacona. That suit is filed by the respondents for permanent injunction restraining the petitioners or anybody on their behalf from interfering with the suit property. The case made out in the plaint is that the said property was originally owned by late father of the respondents, namely, Shri Mhablo Jiblo Velip, who had acquired the ownership by virtue of a deed of sale dated 2/9/1968 along with other landed properties situated at village Gaodongrem, Taluka Canacona. Shri Mhablo Velip expired on 7/6/2013 leaving behind the respondents/plaintiffs as the only heirs. In para 6 of the plaint the respondents have set out the boundaries of the suit property (which after the promulgation of the survey bears survey no.37/3) as under:

“On or towards the East: By the Property bearing Survey no.37/2 of village Gaodongrem, Taluka Canacona Goa and survey no.37/5 of village Gaodongrem, Taluka Canacona Goa:

On or Towards the West: By water drain:

On or Towards the North: By water drain and property bearing survey no.37/2 and 37/1 of village Gaodongrem, Taluka Canacona Goa;

On or Towards the South: By the Drain and beyond which the property bearing survey no.37/6 of village Gaodongrem, Taluka Canacona Goa;"

3. It appears that the trial court had appointed a Court surveyor who has submitted 'physical identification report dated 25/6/2014'. It further appears that the parties also obtained separate survey reports from private surveyors which were placed on record. According to the plaintiffs, the suit property is better known as "Canapal" and corresponds to matríz no.246, while the land belonging to the petitioner which is known as "Matutemba" or "Matudando" corresponds to matríz no.245.

4. The learned trial Court rejected the application for temporary injunction by order dated 2/5/2015 which was challenged by the respondents before the learned District Judge in Misc. Civil Appeal No.45/2015. The learned District judge by judgment and order dated 9/3/2016 has allowed

the appeal thereby granting temporary injunction in favour of the respondents. The petitioners are thereby restrained from interfering in the suit property bearing survey no.37/3 of village Gaodongrem. Feeling aggrieved, the petitioners are before this Court.

5. I have heard Shri Usgaonkar, the learned counsel for the petitioners and Shri Ramani, the learned counsel for the respondents. With the assistance of the learned counsel for the parties, I have perused the relevant documents and have gone through the order passed by the learned trial Court as well as the judgment rendered by the learned District Judge.

6. It is submitted by the learned counsel for the petitioners that the boundaries of the suit property as mentioned in the plaint do not tally with survey plan, which is at page 101 of the compilation. It is submitted that the learned District Judge failed to properly consider the effect of the report of the surveyor appointed by the Court and by relying on Form I and XIV has granted temporary injunction.

7. On the contrary, it is submitted by the learned counsel for the respondents that the property which was purchased by the deceased father of the respondents by sale deed dated 2/9/1968 was a larger property of which the suit property is a part. Mr. Ramani, the learned counsel for the respondents in all fairness does not dispute that the boundaries as mentioned in the plaint are of the larger property purchased vide sale deed of 1968 and they may not strictly correspond to the suit property, which is a part of the larger property. The learned counsel, on instructions, states that there is an application for amendment of the plaint filed which is pending before the trial Court. It is submitted that the learned District Judge has rightly relied upon the Form No.I and XIV of the suit property which stands in the name of the respondents and which has a presumptive value.

8. I have carefully considered the submissions made . Prima facie the boundaries as mentioned in the plaint do not tally with the boundaries as shown in the survey plan. As noticed earlier, it is also not disputed on behalf of the

respondents that the boundaries so mentioned in the plaint are of the larger property and they may not strictly correspond to the suit property which is part of the larger property so purchased. The Court surveyor had found that the property known as "Canapal" bearing matriz no.246 is bigger in size and is recorded under present survey sub division no.37/1, 2, 3 (part) and 4, while the property known as Matudando" bearing matriz no.245 is a bigger property recorded under survey no.37/5 and 37/3. It can thus prima facie be seen that the property under matriz no.246 comprises of a part of survey no.37/3, while the property bearing matrix no.245, namely, "Matudando" which is claimed by the petitioners is recorded under the present survey sub division 37/5 and 37/3. The learned District Judge has primarily relied upon the observations in the survey report that no matriz boundaries are corresponding as per the location of the property with reference to the present survey nos 37/5 and 37/3. Thus prima facie considering the report of the Court surveyor only part of survey no.37/3 is referable to matriz no.246, while the survey report shows that matriz no.245 (claimed by the respondents)

correspondents to matrix nos. 37/3 and 37/5. In that view of the matter and further having regard to the fact that the respondents are seeking appropriate amendment of the boundaries, in my considered view the impugned order cannot be sustained and will have to be set aside. If any application for amendment is filed and is pending before the trial Court, the trial Court shall decide the same on its own merits and in accordance with law. It will be open to the respondents to seek temporary injunction in the event such an amendment is allowed. It is made clear that this Court has not expressed any opinion as to the merits of any such application filed. With this, the following order is passed:

Order:

- (i) The impugned order dated 9.3.2016 is hereby set aside.
The application for temporary injunction stands dismissed.
- (ii) Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/