

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 703 OF 2016

SHRI. PRABHAKAR XAMBU BHANDARI. ... Petitioner
Versus
SHRI. TUKARAM DATTA NAIK AND ANR. ... Respondents

Mr. R. G. Ramani, Advocate for the petitioner.
Mr. Devidas J. Pangam, Advocate for the respondent nos. 1 and 2.

Coram:- F. M. REIS, J.

Date:- 28th November, 2016

ORAL ORDER :

Heard Mr. R. G. Ramani, learned counsel appearing for the petitioner and Mr. D. J. Pangam, learned counsel appearing for the respondent nos. 1 and 2.

2. The challenge in the above petition is limited to the refusal of the injunction by the learned Lower Appellate Court by an order dated 08.03.2016 in respect of an access claimed by the petitioner.

3. Mr Ramani, learned counsel appearing for the petitioner submits that the petitioner as well as the respondents are mundkars of a Bhatkar Sanvordekar and the suit was filed by the petitioner inter alia on the ground that during reconstruction carried out by the respondents there was an encroachment into the mundkarial area of the petitioner as well as an obstruction to an access to go to the main

road towards the southern side of the house occupied by the petitioner. The learned counsel further pointed out that the learned Trial Judge by an order dated 12.11.2014 disposed of the application for temporary injunction inter alia granting a mandatory injunction to demolish the column which was stated to have encroached into the rights of the petitioner though the claim of access was refused. The learned counsel further pointed out that the petitioner preferred an appeal before the learned Lower Appellate Court with regard to the refusal of the injunction in connection with the access wherein the respondents filed a cross appeal. It is further pointed out that by the said judgment the learned Lower Appellate Court modified the order of mandatory injunction inter alia to the effect that the petitioner was restrained from carrying out any further construction with regard to the subject column though the relief with regard to the access was dismissed. The learned counsel further pointed out that the petitioner is entitled to the relief sought in the application for temporary injunction specially in connection with the access as according to him the respondents have obstructed the access reserved for the petitioner. The learned counsel has taken me through the plaint as well as the material on record to point out the position of the access which has been obstructed by the respondents. The learned counsel has thereafter taken me through the judgment of the learned Lower Appellate Court to point out that the learned Judge has erroneously refused the relief of injunction in respect of the subject access.

4. On the other hand, Mr. Pangam, learned counsel appearing for the respondent nos. 1 and 2 has pointed out that the only aspect to be examined in the present petition is with regard to the access claimed by the petitioner. The learned counsel further pointed out that both the Courts below have concurrently found that there was an obstruction carried out by the respondents with regard to the subject access. The learned counsel has brought to my notice the photograph to show the position at the site to point out that in between the construction being carried out by the respondents and one mud house of one Mr. Chari shown in the photograph marked 'X' for identification, there is an access available at the site which leads to a stair case going to the house of the petitioner and as such according to him there is no jurisdictional error committed by the learned Judge while passing the impugned order.

5. I have considered the submissions of the learned counsel and I have also gone through the records. The position of the claim of the access as shown in the photograph marked 'X' for identification has not been disputed by the learned counsel appearing for the petitioner. In such circumstances, I find that there is no jurisdictional error committed by the learned Judge while passing the impugned order disposing of the application for temporary injunction. Considering the position at the site as reflected in the photograph marked 'X' for identification, the question of granting any further relief in favour of the petitioner would not arise at all. The petitioner is claiming to be a

mundkar of the property and his rights are protected in the Mundkar Act.

6. Subject to the above, I find no merit in the above petition which stands accordingly rejected.

F. M. REIS, J.

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