

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 119 OF 2016

MS. KUNDA VASSUDEO PAKHADE ALIAS
PAKALE.,

... Appellant

Versus

SHRI. ABHIJIT GANGADHAR NAIK.,

... Respondent

Shri Preetam Talaulikar, Advocate for the Appellant.

Coram:- SMT. R. P. SONDURBALDOTA, J.

Date:- 1st December, 2016

ORAL ORDER :

This Second Appeal challenges the concurrent findings of the Trial Court and the First Appellate Court as regards the dismissal of the appellant's suit holding that the appellant has failed to establish that the respondent has encroached upon the suit property by demolishing the pig type toilet and carrying out illegal construction covering an area of about 7.3 metres x 7.4 metres of the suit land. With these findings the trial Court dismissed the appellant's suit and the District Court dismissed the appellant's Civil Appeal.

2. The appellant came to the Court with a case that she is the owner of the property at Survey No.53/7 of Village Kumbharjua with two houses standing thereon being house no.620/2 and house no.620/1 along with a well in the land. The appellant

alleged that there was an open pig type toilet belonging to her in the suit property. In April, 2004 when she was at Mumbai, one Tukaram Bandekar, who was occupying her house on her permission informed her that the respondent has trespassed on to the suit property, demolished the pig type toilet and started illegal construction. On these allegations she sought for a permanent injunction to restrain the respondent from interfering with her peaceful possession and enjoyment of the property and mandatory order directing him to demolish the illegal construction carried out by him and restoring the land to the original condition.

3. The appellant has not examined herself in the suit. She examined the wife of Tukaram Bandekar, whose evidence was found to be completely inconsistent with the pleadings. In her evidence, the witness states that there were in fact five houses in the property with two pig type toilets. Both the toilets were demolished as far back in the year 2003. With this evidence of the appellant's own witness there could not have been any finding other than that recorded by the Trial Court as regards demolition of the toilets and illegal construction by the respondent.

4. Shri Talaulikar, the learned Counsel for the appellant submits that the Courts below have erred in holding that the suit is

affected by Order 7 Rule 3 of CPC because as the plaint does not specify the alleged illegal construction by proper description. The plaint is also not accompanied by a sketch. There is no dispute that the plaint does not specifically describe the location of the appellant's pig type toilet and the construction carried out by the respondent. Therefore the Courts have correctly applied the provision of Order 7 Rule 3 CPC. Further in view of the inconsistency between the pleadings of the appellant and the evidence of her witness, the specific identification of the location of the appellant's toilet structure and the construction of the respondent becomes all the more important. It is also to be noted that the appellant has not disclosed in the plaint that the respondent is her co-owner. She has come with a specific case that the respondent is a trespasser in respect of the suit property. Thus there is also suppression of material fact in the plaint. Consequently the appellant is not entitled to the equitable reliefs of injunction. There is also no substantial question of law arising for consideration of the Court in the Second Appeal. Hence, the Second Appeal is dismissed.

SMT. R. P. SONDURBALDOTA, J.

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