

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 62 OF 2015

SHRI GOVIND SAJRO GHATWAL AND
ANR.,

... Appellants

Versus

SHRI KASHINATH PANDURANG GHATWAL.

... Respondent

Mr. Valmiki Menezes, Advocate for the appellants.
Mr. Ashwin D. Bhobe, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 15th April, 2016

ORAL ORDER :

Heard Mr. V. Menezes, learned counsel appearing for the appellants and Mr. A. D. Bhobe, learned counsel appearing for the respondent.

2. The above appeal challenges the judgments passed by the Courts below whereby the appellants have been restrained from interfering in any manner with the possession of the respondent in respect of the suit house bearing No. 184/3 of Sirigao Village.

3. Mr. V. Menezes, learned counsel appearing for the appellants has firstly taken me through the issues framed by the learned Trial Judge to point out that the first issue framed was to the effect that the respondent has to establish whether he was the co-owner of the subject house. The learned counsel further pointed out that it is the

case of the appellants that the subject house is a part of one house which was constructed in common by the ancestors of the appellants and the ancestors of the respondent. The learned counsel further pointed out that as the appellants are the co-owners of the subject house, the Courts below were not justified to grant the permanent injunction against the appellants. The learned counsel further submits that the property where the suit house is located belongs to one Jaidev Pundalik Homkundi and that it is nobody's case that the land belongs either to the appellants or the respondent. The learned counsel further submits that as the suit house bearing No.184/3 forms part of the single house which was jointly constructed by the ancestors of the appellants and the respondent, the Courts below were not justified to grant the relief of permanent injunction. The learned counsel further submits that the Courts below have misconstrued the pleadings as well as the evidence on record. The learned counsel further submits that even the documents in respect of the water bills and electricity bills were not pertaining to the suit house and as such the Courts below were not justified to rely on the said documents to grant the relief sought by the respondent. The learned counsel further pointed out that merely on the basis of admission of the appellants that they have no right to the portion of the house bearing Nos.184/1, 184/2 and 184/3 would itself not defeat the claim of the appellants that the portion of the house forms part of the common house. The learned counsel as such points out that there are substantial questions of law which arise for consideration in the present Second Appeal.

4. On the other hand, Mr. A. D. Bhobe, learned counsel appearing for the respondent has supported the impugned judgments. The learned counsel has pointed out that all the documents which have been produced in connection with the electricity bills and water bills are in respect of the suit house though there may be discrepancy with regard to the number of the house referred to therein. The learned counsel further points out that on going through the written statement filed by the appellants, it clearly shows that it is the case of the appellants that the original house was bearing Nos.184/1 and 184/2 whereby the house bearing no.184/1 belongs to the appellants and their ancestors whereas the house bearing No.184/2 belongs to the brother of the respondent herein. The learned counsel further pointed out that on perusal of the written statement filed by the appellants, it is their case that the house which has been repaired by the respondent was originally a cow shed which was being used by the ancestors of the appellants and the respondent. The learned counsel further pointed out that the Courts below upon appreciating the evidence on record have found that such defence raised by the appellants is erroneous and concluded that though all the three portions which were originally part of the house constructed by the ancestors of the appellants and the respondent nevertheless, there was exclusive enjoyment of different portions bearing house Nos. 184/1, 184/2 and 184/3. The learned counsel as such points out that it is well settled that even based on possession, the Courts can grant the relief

of permanent injunction.

5. I have considered the submissions of the learned counsel and I have also gone through the records. The suit filed by the appellants is for injunction simpliciter. In such suit, the paramount consideration is the aspect of possession which has to be referable to the right to remain in possession. In the present case, based on the documents on record and admission of DW1 himself coupled with the averments in the written statement, the Courts below have come to the conclusion that it is not disputed that the suit house bearing no. 184/3 was exclusively occupied by the ancestors of the respondent herein. It is the case of the respondent that the portion of house bearing No.184/2 is being occupied by the brother of the respondent herein and that his father was in occupation of both the portions bearing house nos.184/2 and 184/3 and the appellants have not disputed that the said two portions were in fact in occupation of the father of the respondent and his brother who is in occupation of house No.184/2. It is also admitted by the appellants that the portion of the house bearing No.184/1 belongs to the appellants herein. This clearly shows that the findings arrived at by the Courts below based on the appreciation of evidence on record that the suit house bearing no.184/3 was being enjoyed exclusively by the ancestors of the respondent and thereafter by the respondent cannot be faulted. The findings of possession of the Courts justifies the grant of the relief of permanent injunction in the circumstances of the case.

6. With regard to the contention of Mr. V. Menezes, learned counsel appearing for the appellants that there is a specific finding by the Courts below that the house was constructed in common by the ancestors of the appellants and the respondent, I find that on going through the written statement as well as the findings of the learned Judge, it is held that the houses were constructed by the ancestors of the appellants and the respondent and that thereafter it was being separately occupied by the ancestors of the appellants and the respondent. The portion of the house which was being occupied by the ancestors of the appellants was given house no.184/1 whereas the portion of the house which was occupied by the ancestors of the respondent was given house nos.184/2 and 184/3. This clearly shows the fragmentation of the subject house by the parties. On the basis of such concurrent findings of fact based on the evidence on record, I find that the contention of the learned counsel that there is a finding by the Courts below that the house was belonged in co-ownership cannot be accepted.

7. With regard to the contention of Mr. V. Menezes, learned counsel appearing for the appellants that the house tax receipts and the water bills are in respect of a different house and not the suit house, I find that the Courts below upon appreciating the evidence on record have come to the conclusion that the payments towards the house tax as well as the water connection were being paid by the

respondent and his ancestors. There is nothing shown by the appellants that there are other houses which are being occupied by the respondent having such number referred to in the tax receipt. In such circumstances, the findings of the Courts below based on appreciation of evidence on record cannot be re-appreciated by this Court in the present Second Appeal filed under Section 100 of the Civil Procedure Code. As already pointed out herein above, the suit filed by the respondent is for injunction simpliciter. Such suit has to be considered primarily based on possession and in the present case, both the Courts below have concurrently found that the respondent and his ancestors were in settled possession of the subject house. Such possession is referable to the right to occupy such portion on the basis of admission of the appellants coupled with the evidence of the daughter of the original owner of the land where the subject house is located. In such circumstances, I find no case is made out by the appellants for interference in the impugned judgments. Hence, the appeal stands accordingly rejected.

F. M. REIS, J.

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