

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 117 OF 2015

KAYJI REAL ESTATE PVT. LTD., REP.
BY ITS POA SHRI DEVIDAS SADANAND
KUDCHADKAR.

... Appellant

Versus

SHRI VISHWANATH RAGHUVIR CAROIKAR
@ VISHWANATH RAGHUVIR KAREKAR AND
3 ORS.,

... Respondents

Mr. R. G. Ramani, Advocate for the appellant.
Mr. S. D. Lotlikar, Senior Advocate with Ms. G. Xettigar, Advocate
for the respondent no.1.

Coram:- F. M. REIS, J.

Date:- 7th July, 2016

P.C.

Heard Mr. R. G. Ramani, learned counsel appearing for the appellant and Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondent no.1.

2. The above appeal challenges the judgments passed by the Courts below whereby the permanent injunction sought by the respondents came to be granted and directions were issued to identify the encroachment carried out by the appellant and deal with such encroachment in accordance with law.

3. Mr. Ramani, learned counsel appearing for the appellant points out that the appellant was a bonafide purchaser of the property

without knowledge that a portion thereof belonged to the respondents. The learned counsel further pointed out that the appellant purchased an area of 4200 square metres from the predecessor in title of the respondents and started putting up a construction therein when the respondents started obstructing such development. The learned counsel further submits that the respondents thereafter filed a suit to restrain the appellant from interfering with the disputed property. The learned counsel further pointed out that the appellant were not aware about the injunction operating against the predecessor in title of the appellant in connection with the disputed property.

4. On the other hand, Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondents has pointed out that both the Courts below have come to the conclusion that the property purchased by the respondents has been encroached by the appellant. It is further pointed out that the alleged development carried out by the appellant is in breach of the injunction orders operating in favour of the respondents. The learned Senior Counsel has thereafter taken me through the findings in the impugned judgment to point out that the learned Judge has rightly appreciated the material on record and concurrently come to the conclusion that the appellant have encroached into the property of the respondents. The learned Senior Counsel has also pointed out that the learned Lower Appellate Court has rightly held that the encroachment would have to be removed and

that the encroachment is shown in the plan produced on record.

5. I have considered the submissions of the learned counsel and I have also gone through the records. Both the Courts below have concurrently come to the conclusion that the appellant have encroached into the property of the respondents and there is no perversity disclosed in such findings of the Court below. In fact, the learned counsel for the appellant has not raised any contention to dispute the correctness of such findings. In such circumstances, there is no case made out by the appellant for interference of this Court in the impugned judgment in the present appeal under Section 100 of Civil Procedure Code.

6. On going through the judgment of the learned Lower Appellate Court, I find that the learned Judge has framed three points for determination. While examining whether the appellant were in possession of the suit plot at the time of the institution of the suit, the learned Judge noted that there was an order of injunction dated 23.09.1999 against the defendant nos. 1 to 3 who are the respondent nos. 2 to 4 herein not to carry out any construction or interfere in the subject property. The learned Judge also noted that the sale deed in favour of the original plaintiff/respondent no.1 herein was executed on 18.12.1970 and the plan is annexed to such sale deed. The learned Judge further noted that all the encroachments carried out in the suit property have been made inspite of the order of injunction of the

Court. The learned Judge further held that the appellant cannot take advantage of such encroachment made in total violation of the order of the Court and claim that he had been in possession of the suit plot. The learned Judge after appreciating the material on record has come to the conclusion that the possession continued with the respondent no.1/plaintiff and as such there was no requirement for seeking restoration of possession. The learned Judge further noted that the interference in the property by the appellant despite of the injunction being in operation cannot be taken cognizance, considering the suit was filed in the year 2001. The learned Appellate Court as such found that the plan produced on record at Exhibit 72 has clearly shown the encroachments made which have been duly identified in the plan annexed to the said report. The learned Judge further noted that the construction done in breach of the order of injunction will have to be removed and consequently, disposed of the appeal preferred by the appellant.

7. As already pointed out herein above, the learned counsel for the appellant was unable to point out any material to show from the records that the findings of the Courts below that the property of the plaintiff/respondent no.1 has been encroached are perverse. In such circumstances, the relief granted by the Courts below based on the material on record cannot be faulted. Once the Court has found that the ownership and the possession of the subject property belongs to the respondent no.1, the acts of the appellant and the other defendants

in encroaching therein are an unjustified intrusion into the property of the respondent no.1. Taking note of the concurrent findings of fact of the Courts below, I find that there are no substantial questions of law which arise in the present appeal for consideration. The appeal stands accordingly rejected.

F. M. REIS, J.

at*