

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 648 OF 2016

SHRI. KISHOR SHANTARAM
SHETMANDREKAR AND ANR.

... Petitioners

Versus

SHRI. TANAJI DATTARAM CHARI @
TANAJI DATTARAM MANDREKAR AND 2
ORS.

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioners.
Mr. Deepak Gaonkar, Advocate for the respondent nos. 1 and 2.
Mr. P. Shahapurkar, Advocate for the respondent no.4.

Coram:- F. M. REIS, J.

Date:- 21st November, 2016

ORAL ORDER :

Heard Mr. A. D. Bhobe, learned counsel appearing for the petitioners and Mr. D. Gaonkar, learned counsel appearing for the respondent nos. 1 and 2.

2. The petition takes exception to the orders passed by the learned Trial Judge and the learned Lower Appellate Court whereby an application for temporary injunction filed by the respondents came to be partly allowed and inter alia the petitioners were restrained from carrying out further construction in the subject property.

3. Upon hearing the learned counsel, there is a serious dispute with regard to the rival claims that the petitioners and the respondents are co-owners of the subject property. Mr. Bhobe,

learned counsel appearing for the petitioners however points out that the subject construction was being put up pursuant to the permissions obtained from the statutory authorities. Mr. D. Gaonkar, learned counsel appearing for the respondent nos. 1 and 2 however disputes the said contention and submits that the subject construction is altogether a new construction being put up by the petitioners. The learned counsel further points out that the restrain order is not to carry out any further construction activity in the subject property or change the nature thereof and there is no restrain order to occupy the part of the structure which has already been constructed though according to him is illegal. Mr. Bhobe, learned counsel appearing for the petitioners submits that for such occupation some covering of the roof has to be completed by the petitioners and make some necessary changes to make it habitable.

4. Having considered the rival contentions, I find that both the Courts below have exercised their discretion while disposing of the application under Order 39 Rule 1 and 2 of the Civil Procedure Code, and as such the interference by this Court under Article 227 of the Constitution of India in such a discretionary order would not at all be justified unless it is erroneously exercised. Based on the rival contentions, there is no jurisdictional error or any perversity in the prima facie findings arrived at by the Courts below. In such circumstances, the learned Judge would have to proceed to dispose of the suit on its

own merits without being influenced in the prima facie observations in the impugned order as expeditiously as possible.

5. With regard to the contention of Mr. Bhobe, learned counsel appearing for the petitioners that the existing structure would require some covering and other modification to make it habitable, I find that this aspect can be considered by the learned Judge on its own merits in case the petitioners moves the Court on this aspect. Needless to say that such an application would be considered after hearing the respondents in accordance with law.

6. Reserving the said right to the petitioners to move the learned Judge as referred to herein above, I find that there is no case made out by the petitioners for interference in the impugned order. The learned Judge as such shall proceed to dispose of the suit filed by the respondents as expeditiously as possible within six months from the date of the receipt of this order. Needless to say that the learned Judge shall not be influenced by the prima facie findings arrived at by the Courts below while passing the impugned order. The petition stands disposed of accordingly.

F. M. REIS, J.

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