

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 616 OF 2015

SHRI MOHANDAS VENKATESH GAONKAR
AND ANR.,

... Petitioners

Versus

GURUDAS PANDHARI GAONKAR.

... Respondent

Mr. A. D. Bhobe, Advocate for the Petitioners.
Mr. P. Lotlikar, Advocate for the Respondent.

Coram:- F. M. REIS, J.

Date:- 22nd November, 2016

ORAL ORDER

Heard Mr. A. D. Bhobe, learned Counsel appearing for the Petitioners and Mr. Lotlikar, learned Counsel appearing for the Respondent.

2. The challenge in the above Petition is to the Order of temporary injunction granted by the Courts below wherein the Petitioners have been inter alia restrained from obstructing the user of the suit road as identified in the plaint.

3. Mr. A. D. Bhobe, learned Counsel appearing for the Petitioners, seriously disputes the existence of a five metre wide road as claimed by the Respondent. It is further pointed out that based on the Order of injunction granted by the Courts below, the Petitioners apprehend that the Respondent may change the

status quo existing at the site in respect of the suit road and even cut the existing trees therein. Learned Counsel further pointed out that the disputed property is in co-ownership and, as such, it is well settled that any change of user would be affected with the consent of the other co-owners. Learned Counsel as such submits that the impugned Order deserves to be quashed and set aside.

4. On the other hand, Shri Lotlikar, learned Counsel appearing for the Respondent, has supported the impugned Order. It is pointed out that the existing road has a width of five metres and length of 200 metres and according to him, such road was reserved for the benefit of the Respondent in view of the consent and no objection obtained from all the co-owners including the father of the Petitioners. Learned Counsel further pointed out that as such both the Courts below on the basis of the material on record have come to the conclusion that the Respondent is entitled for the relief of temporary injunction as granted. Learned Counsel has further pointed out, upon instructions, that the Respondent will not change the status quo at the site in respect of the subject road and not cut any trees therein nor change the nature of such road.

5. I have duly considered the submissions of the learned Counsel and I have also gone through the records. The Order

under challenge is a discretionary Order passed by the Courts below whilst disposing of an application for temporary injunction. Such Orders cannot be interfered in proceedings under Article 227 of the Constitution of India unless there is total miscarriage of justice to the Petitioners or that the discretion has been arbitrarily exercised by the subordinate Courts. In the present case, on perusal of the impugned Order, I find that there is no irregularities committed by the Courts below whilst disposing of the application for temporary injunction.

6. With regard to the apprehension of Mr. A. D. Bhobe, learned Counsel appearing for the Petitioner, that the Respondent may change the status at the site in respect of the subject road and/or cut the trees therein in view of the statement of Mr. Lotlikar, learned Counsel appearing for the Respondent, upon instructions, such apprehension would not at all survive as, according to Mr. Lotlikar, there are no trees on the subject road which is disputed by Mr. A. D. Bhobe, learned Counsel for the Petitioners.

6. Accepting the said statement of Mr. Lotlikar, learned Counsel, the Petition stands disposed of.

F. M. REIS, J.

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