

IN THE HIGH COURT OF BOMBAY AT GOA.**APPEAL FROM ORDER NO. 45 OF 2014.**

Shri Janardhan Vassudev Venzi Naik
s/o. Shri Vassudev Venzi Naik,
major, married and resident of
H.No. 144, Tamsado,
Dharbandora, Goa.

.....Appellant.

Versus

1. Shri Digambar Krishna Naik
s/o. Shri Krishna Naik,
major, married, agriculturist,
resident of H.No. 141, Marad Road,
Bottonem, Dharbandora, Goa.
2. Government of Goa,
through Chief Secretary,
Secretariat, Porvorim Goa.
3. The Deputy Collector,
Office of the Dy. Collector & SDM,
Dharbandora, Goa.
4. The Mamlatdar,
Office of the Mamlatdar,
Dharbandora, Goa.
5. The Executive Engineer
Works Division II,
Water Resources Dept.,
Gogol, Margao, Goa.
6. Village Panchayat Dharbandora,
Through Secretary,
Dharbandora, Goa.

.... Respondents.

Mr. J. Godinho, Advocate appearing for the appellant.

Mr. S. D. Lotlikar, Senior Advocate with Mr. P. S. Lotlikar, Advocate
appearing for the respondent no.1.

Mr. V. Rodrigues, Government Advocate appearing for the respondent
nos. 2 to 6.

Coram:- K. L. Wadane, J.

Reserved on:- 4th February, 2016.

Pronounced on:- 11th February, 2016.

JUDGMENT

Heard Mr. J. Godinho, learned Counsel appearing for the appellant, Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondent no.1 and Mr. V. Rodrigues, learned Government Advocate appearing for the respondent nos. 2 to 6.

2. Admit.

3. Heard forthwith with the consent of the learned counsel appearing for the respective parties.

4. Mr. P. S. Lotlikar, learned Counsel waives notice on behalf of the respondent no.1 and Mr. V. Rodrigues, learned Government Advocate waives notice on behalf of the respondent nos. 2 to 6.

5. The present appeal is preferred by the appellant/original defendant no. 6 against the order dated 3.9.2014 passed by the learned Ad-hoc District Judge-I, FTC, South Goa, Margao, on the application for temporary injunction filed by the respondent no.1/plaintiff in the Civil Suit No.52/2013, by which the application of the respondent no.1/plaintiff for temporary injunction has been allowed. Therefore, the present appeal.

6. Parties are referred to as per their original status.

7. The plaintiff is the owner in possession and enjoyment of the first plot, second plot and third plot from survey no. 186/3-A purchased under two Sale Deeds dated 10.1.2001 and 7.10.2010 under matríz No.24 situated at Dharbandora. The aforesaid plots were separately numbered as 186/3-A, 186/3 and 188/1. It is the case of the plaintiff that he is owner in possession of the suit property and all the above three plots were developed and cultivated by him which consists of coconut trees, mango trees, jackfruit trees and various other fruit bearing trees. That abutting the second plot, the third plot and the plot belonging to Defendant No. 6, surveyed under no. 186/3-C, there exists a natural nallah of flowing water which is facilitating the agricultural activities to the third plot belonging to the Plaintiff and other neighbouring agricultural properties. The Plaintiff further states that there also exists a drinking water well situated at a distance of 20 metres from the said nallah and the said nallah is a source of water to the well belonging to him.

8. In the month of October 2012, the Plaintiff noticed that the Defendant no. 6 has undertaken the work of filling the said nallah and as such, he immediately obtained information under the Right to Information Act, which shows that no permission was granted by the Defendant no. 4 to the Defendant no. 6 for diversion of the original

water/nallah which flows between the survey no. 186/3-C and survey no. 187. It is further the case of the Plaintiff that in November, 2012, he noticed that diversion of the said nallah has taken place in survey no. 187 belonging to Defendant no. 6. The Plaintiff further states that the said illegal Act of the defendant no. 6 continued till the end of May, 2013 and the defendant no. 6 by committing this act has violated the plaintiff right to use the water from the said nallah which facilitates the agricultural activities of the plaintiff in third plot and has reduced the source of water to the plaintiff's said well. The defendant no. 6 has no right to fill the said nallah with mud, debris and divert the said nallah through survey no. 187.

9. The defendant no. 6 resisted the application for temporary injunction and has stated that the property under survey no. 188/1 is a tenanted land and the plaintiff is falsely claiming right in the said property. The land surveyed under No. 187/1 is barren land and there are no trees of any nature. The plaintiff has constructed one illegal house and one shed which is illegally converted into residential house in the first plot. The defendant no. 6 further states that the said nallah is touching the third plot surveyed under no. 188/1 and the first plot surveyed under no. 186/3-A at a distance of 92 metres in length and, as such, there is a flow of the water to the said plots and, as such, there is no question of any blockage or stoppage of the water as alleged by the plaintiff.

10. Considering the rival contentions of the parties, the learned Trial Court has granted the application for temporary injunction. Against which the original defendant no.6 preferred this appeal.

11. Upon hearing the learned counsel appearing for the appellant and the learned counsel appearing for the respondents, the following point arises for my determination:-

POINT FOR DETERMINATION

FINDINGS

Whether the plaintiff has made

prima facie case and balance of

convenience in his favour?

..... Yes

12. During the course of arguments Mr. Godinho, learned Counsel appearing for the appellant has submitted that nallah is in the property of appellant and it is not touching the property of the plaintiff. He further submitted that the learned Trial Court has wrongly allowed the application. Therefore, the impugned order needs to be set aside.

13. Mr. Lotlikar, learned Senior Counsel has argued that from the record it appears that due to filling of the nallah diversion of the nallah has been changed. Therefore, the learned Trial Court has rightly allowed the application.

14. I have gone through the record and from the map prepared by the surveyor Shri Rasiklal S. Dangui, it appears that the surveyor has shown by index no.1 that part of the existing nallah is filled with mud and in the second index it is mentioned about a newly diverted nallah. Such situation is clearly depicted from the map prepared by the surveyor Shri Rasiklal S. Dangui. Further more, as per the order of this Court dated 20.7.2015, the respondent no. 5 Executive Engineer, Works Division II, Water Resources Department was directed to submit his report. Accordingly, said report is produced on record. From the survey report, it appears that one Mr. Rahul R. Joshi carried out the survey along with Assistant Engineer, Sub Division V, Work Division II of the Water Resources Department in the presence of the plaintiff and the defendant no. 6 and the plan has been prepared showing the actual position of the nallah at the site/ location. From the map it appears that the actual position of the nallah as per the loco is shown in red ink and nallah as per survey plan is delineated in blue.

15. From the above situation, it appears that the plaintiff has made out a prima facie case to show that the defendant no. 6 has tried to fill up the nallah due to which there is diversion of nallah.

16. I have gone through the reasons recorded by the learned trial Court while issuing interim relief and the same appears to be recorded correctly.

17. In such circumstances, it is not desirable to disturb the findings given by the learned Trial court on interim relief, unless it is shown that the discretion used by the learned Trial Court is arbitrary.

18. For the reasons stated above, I am of the opinion that there is no substance in the appeal, accordingly, appeal stands dismissed with no order as to costs.

K. L. WADANE, J.

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