

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 21 OF 2016

SUNITA SHIRODKAR ALIAS SUNITA
DAMODAR MARTINS

... Appellant

Versus

TIU NARVEKAR & 6 ORS.,

... Respondents

Mr. Nigel Da Costa Frias, Advocate for the appellant.

Coram:- F. M. REIS, J.

Date:- 15th July, 2016

P.C.

Heard Mr. Nigel Da Costa Frias, learned counsel appearing for the appellant.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the appellant for permanent injunction and mandatory injunction came to be dismissed.

3. Upon hearing Mr. Nigel Da Costa Frias, learned counsel appearing for the appellant the undisputed facts as they so emerged are that there was a tenant of the subject property which is an agricultural land which devolved upon the appellant and the respondents. The dispute appears to be between two co-tenants of the subject property on the ground that the respondents have encroached into the property by putting up a construction of a toilet.

In the plaint, it is the case of the appellant that the subject property is surveyed under No.41/1 of Taleigao Village. Both the Courts below while disposing of the suit as well as the appeal preferred by the appellant have noted the admission of PW1 in cross examination that the subject property is surveyed under No.40/14 and on this ground non suited the appellant. Mr. Nigel Da Costa Frias, learned counsel has pointed out that there is no admission on that count as according to him the respondents themselves have admitted the identity of the property and there is no dispute with regard to the survey number of such property. The learned counsel further pointed out that even assuming both the fact finding Courts have taken a view that there was an existing toilet which has been reconstructed by the respondents, nevertheless, the respondents have to be restrained from carrying out any further construction in the property.

4. Upon hearing the learned counsel appearing for the appellant, I find that the concurrent findings arrived at by the Courts below with regard to the subject structure cannot be interfered by this Court in the present appeal as there is no perversity in such findings. As far as the contention of Mr. Nigel Da Costa Frias, learned counsel appearing for the appellant is concerned with regard to his claim that the respondents should be restrained from putting up any further construction, I find that this would give rise to a fresh cause of action as the pleadings do not support that any further construction is being put up by the respondents. But however, the appellant in such

circumstances would have to seek for partition, if they are so entitled and seek appropriate relief in accordance with law. As such, I find that there is no substantial question of law which arises in the present appeal for consideration. There is no perversity in the findings of fact by the fact finding Courts below. The appeal stands accordingly rejected.

F. M. REIS, J.

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