

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1099 OF 2016

MR. FRANCISCO XAVIER RODRIGUES AND
ANR.,

... Petitioners

Versus

MR. ROLAND MENDES AND ANR.,

... Respondents

Mr. S. R. Rivankar and Mr. Rama Rivankar, Advocates for the
petitioners.

Coram:- F. M. REIS, J.

Date:- 2nd December, 2016

P.C.

Heard Mr. S. R. Rivankar, learned counsel appearing for
the petitioners.

2. The challenge in the above petition is to the disposal of the
applications for temporary injunction filed by the petitioners and
the respondents.

3. Mr. Rivankar, learned counsel appearing for the petitioners
has submitted that the property of the respondents is surveyed
under Nos.329/5 and 6 of Saligao Village whereas the property
belonging to the petitioners is surveyed under Nos.329/7, 8, 9
and 10. The learned counsel further pointed out that the
petitioners claimed that they are in adverse possession of the
portion of the property surveyed under No.329/6 wherein

according to him a septic tank is located. The learned counsel further pointed out that the learned Judge has erroneously come to the conclusion that the petitioners have failed to prima facie establish their claim of adverse possession and as such dismissed the application for temporary injunction filed by the petitioners. The learned counsel further submits that as far as the application filed by the respondents is concerned, the learned Judge has come to the conclusion that the respondents are entitled for an injunction restraining the petitioners from carrying out the construction activities in the subject property. The learned counsel further submits that as the application for temporary injunction filed by the petitioners has been rejected, the respondents will encroach into the property of the petitioners surveyed under No.329/8 and as such according to him, the learned Lower Appellate Court was not justified to pass the impugned order. The learned counsel thereafter has taken me through the survey plan to point out that the boundary line separating the property surveyed under No.329/5 and 329/8 is not a straight line but however, the plan attached to the licence issued by the panchayat shows a straight line. The learned counsel further pointed out that as such the petitioners apprehend that the respondents may encroach into the property of the petitioners while putting up such compound wall. The learned counsel as such points out that the impugned order cannot be sustained and deserves to be quashed and set aside.

4. I have considered the submissions of the learned counsel and I have also gone through the records. The learned Judge while passing the impugned order has taken note of the contention of the petitioners that they are in adverse possession of the portion of the property surveyed under no.329/6 and found that prima facie there is no material on record to establish that the petitioners have acquired any right by adverse possession as far as the subject property is concerned. This aspect has been examined also taking note of the survey records which have been duly promulgated which admittedly does not show any portion of the property surveyed under No.329/6 stands in the name of the petitioners. In such circumstances, I find that the learned Judge has not committed any jurisdictional error while dismissing the application for temporary injunction filed by the petitioners.

5. As far as the next contention of Mr. Rivankar, learned counsel appearing for the petitioners that the respondents may encroach into the property surveyed under No.329/8 while putting up a compound wall, I find that a bare perusal of the construction licence issued by the local panchayat shows that the compound wall has been permitted in the property surveyed under Nos.329/5 and 6. Ex-facie on the basis of such licence, it cannot be said that the apprehension of the petitioners that the respondents would proceed to put up a construction in the

property surveyed under no.329/7 is justified. As such, I find that there is no jurisdictional error committed by the learned Judge while passing the impugned order. An order disposing of an application for temporary injunction is within the discretion of the Court below. There is no case made out by the petitioners to suggest that such discretion has been exercised erroneously or contrary to the well settled principle of law.

6. In view of the above, I find that there is no question of interfering in the impugned order. The findings rendered in the impugned order are only prima facie findings which will not influence the learned Judge while deciding the suit on merits. Needless to say that any changes if at all carried out by the respondents would be subject to the final result of the suit. Hence, the petition stands rejected.

F. M. REIS, J.

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