

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 338 OF 2017**

Shri Guaji Yeshwant Gawde,
represented herein by his Power of Attorney,
Shri Giridhar Gurunath Gawde, son of
Shri Gurunath Dattaram Gawde,
aged 43 years of age,
married, Indian National, resident of
House No. 322/B, Mainwad (Bhom)
Korgao, Pernem-Goa.

..... Petitioners

V e r s u s

Shri Manuel Salvador D'Souza,
resident of House No.142,
Girkawada, Arambol,
Pernem-Goa.

..... Respondent

Shri D. Pangam, Advocate for the Petitioners.
Shri A. D. Bhobe, Advocate for the Respondents.

CORAM: M. S. SONAK, J.
DATE: 24th April, 2017.

ORAL JUDGMENT:

Rule. Rule is made returnable forthwith with consent of the
learned counsel for the parties.

2. Heard Mr. Pangam, the learned counsel for the petitioner and
Mr. A. D. Bhobe, the learned counsel for the respondent.

3. The petitioner challenges the judgment and order dated 28/12/2016, by which, the appeal court has set aside the judgment and order dated 1/12/2015 made by the learned trial judge granting temporary injunction in favour of the petitioner/plaintiff.

4. Mr. Pangam, the learned counsel for the petitioner submits that the appeal court has ignored the principles laid down by the Hon'ble Supreme Court in the matter of interference with discretionary orders. He submits that the appeal court after noting that the name of Yeshwant Gawde is entered in the survey records, has non suited the petitioner on the ground that the petitioner has not produced the birth certificate to establish that he is indeed the son of late Yeshwant Gawde. Mr. Pangam submits that the respondent claims to have obtained a declaration of tenancy in respect of the suit property which admeasures hardly 675 sq.mts or thereabouts. Mr. Pangam submits that there is no material on record to establish that Yeshwant Gawde, the father of the petitioner was properly served in such proceedings. That apart, Mr. Pangam submits that, in case, the respondent claims to be an agricultural tenant in respect of the suit property, the respondent, cannot in the same breath insist upon using the said property for commercial purposes. He submits that the Goa Land Use Act, 1991 bars the user of tenanted property for any non-agricultural purpose. Mr. Pangam submits that there is

no subsisting permission with regard to the structures put up by the respondent. Mr. Pangam submits that on the basis of the permissions for erecting temporary structures, the respondent, has put up certain permanent structures in the suit property. For all these reasons, Mr. Pangam submits that the impugned order is liable to be set aside and the order made by the learned trial Judge restored.

5. Mr. Bhobe, the learned counsel for the respondent submits that the name of the respondent also appears in the survey records in the Other Rights Column. The respondent has obtained a declaration that he is the tenant in respect of the suit property. The structures are permanent and were put up in the year 1989. The petitioner has approached the learned trial Judge with a false case claiming that it is the petitioner who was in possession of the suit propriety when in fact it is clear that the respondent who is in possession of the suit property. The petitioner has no locus standi to institute the suit as the petitioner has not established what right he has in respect of the suit property. For all these reasons Mr. Bhobe submits that this petition is liable to be dismissed.

6. Upon due consideration of the rival submissions and perusal of the material or record, it will be appropriate, if the parties are directed to

maintain status quo in respect of the suit property. The approach of the learned appeal Judge that relief is to be denied for want of production of the birth certificate may not be correct. However, it does appear that even the petitioner had applied for mandatory relief at the interim stage with regard to the pulling down of the structures in the suit property. This prima facie indicates that it is the respondent, who has put the structures in possession of the suit property. In such circumstances there is no question of the petitioner insisting upon some blanket injunction to restrain the respondent from interfering with his alleged possession in respect of the suit property.

7. The issue as to whether the petitioner is really the son of Yeshwant Gawde or not as well as all other issues, can be gone into at the stage of trial. The status quo is required to be ordered because it is the case of the respondent himself that he is the agricultural tenant in respect of the suit property. Since, the structures are stated to be in existence since last several years, there is no question of making any orders at this stage, as regards the same. However, it is only appropriate that the respondent does not undertake any further constructions or put up any further structures in the suit property.

8. The issue as to whether the structures have licences or permissions from the appropriate authorities or whether, the activity which is

undertaken by the respondent in the suit property is in breach of the provisions of the Goa Land Use Act are issues which have not to be gone into at this stage. If the respondent has any grievance in this regard, it is always open to the respondent to apply to the appropriate authorities under the relevant statutes. However, on such ground it is not possible to grant the petitioner any injunction restraining the respondent from interfering with his alleged possession or the suit property.

9. This petition is accordingly disposed off with the following order:

(a) The parties are directed to maintain status quo.

(b) The respondent not to carry out any new or fresh construction in the suit property.

(c) The petitioner is at liberty to make applicant/complaint to the appropriate authority. However, it is clarified that this Court has not adverted to or applied its mind to the various allegations made by the petitioner and therefore all contentions of all parties are left open for determination of such authorities.

(e) None of the observations made in the order made at the stage of deciding interim applications to be taken into consideration at the stage of final disposal of the suit.

(f) Rule is disposed off in the aforesaid terms.

M. S. SONAK , J.

Ap/