

IN THE HIGH COURT OF BOMBAY AT GOA.**APPEAL FROM ORDER NO.34 OF 2015**

M/s Rajaram Bandekar
(Sirigao) Mines Pvt. Ltd., A
Company Incorporated under
the Companies Act, 1956, with
registered Office at :
601, 6th floor, Dr. Ozler Forum,
Near St. Andrews Church,
Vasco-da-Gama ,Goa.
Represented herein Through its
General Manager &
Constituted Attorney Shri
N.P.Vasu Nair, 57 years of age,
son of P.Nair, Having office at
Nitin Chambers, Swatantra
Path, Vasco-da-Gama, Goa
(appointed vide P.O.A. dated
02.04.2009 executed before
Notary Adv. Mrs. Vidhya A.
Shet, Vasc and registered in
her office under No.95769/09
dated 02/04/2009).

Appellant**Versus**

1. Mr. Babi Suresh Gaonkar,
major of age,
son of late Suresh Gaonkar,
r/o H.No. (not known)
Wadacha wada, Sirgao,
Bicholim - Goa.
2. Smt. Suvarna Suresh Gaonkar,
major of age,
widow of Suresh Gaonkar,
r/o H.No. (not known).
Wadacha wada, Sirgao,
Bicholim - Goa.
3. Mr. Yeshwant Babani Gaonkar,
major of age,
son of late Babani Gaonkar,
r/o H.No.(Not known)
Wadacha wada, Sirgao,

Bicholim – Goa.

4. Miss Ritika Yeshwant Gaonkar,
major of age,
wife of Yeshwant B.Gaonkar,
r/o H.No.(not known)
Madhlo Waddo, Sirgao,
Bicholim – Goa.
5. Mr. Yaduvir Babani Gonkar,
major of age,
son of late Babani Gaonkar,
r/o H.No.(not known)
Deul wada, Sirgao,
Bicholim – Goa.
6. Smt. Mitali Yaduvir Gaonkar,
major of age,
wife of Yaduvir Gaonkar,
r/o H.No.(not known)
Deul wada, Sirgao,
Bicholim – Goa.
7. Smt. Roshan Ramakant Gaonkar,
major of age,
wife of late Ramakant B.Gaonkar,
r/o H.No.(not known),
Deul wada, Sirigao,
Bicholim – Goa.
8. Mr. Sesadri Ramakant Gaonkar
major of age,
son of late Ramakant B.Gaonkar,
r/o H.No. Not known,
Deul wada, Sirigao,
Bicholim – Goa.

Respondents

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Shri A.F.Diniz with Shri A.D.Bhobe with Ms. S.Bhobe,
Advocates for the appellant.
Shri Walmiki Menezes, Advocate for the respondents.

CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON :03/07/2017.
PRONOUNCED ON :11/07/2017.

JUDGMENT:

1. This is an appeal under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908, by the appellant-plaintiff, who feels aggrieved with an order of refusal of injunction dated 28th November, 2014, by the learned Senior Civil Judge in Special Civil Suit 6/2013/A.

2. Briefly stated, the appellant had instituted a suit for permanent injunction and consequential reliefs against the respondents, *inter alia* contending that the appellant is an owner of property bearing Survey nos. 59/1, 61/0, 80/1, 80/2 and 80/5 of village Sirigao, vide Sale Deeds dated 28.1.1971, 30.4.1973, 11.8.1977 and 8.9.1977. The appellant contends that pursuant to the execution of the aforesaid Sale Deeds, it has been in rightful possession of those properties as a legal owner. Most of the portions of the said properties fell within the limits of appellant's mining lease areas vide Concession bearing T.C. no.4/49 at village Sirigao. These properties are popularly known as "MUDDY". The appellant has been carrying on mining activities in the area covered by the mining lease and had developed a road within their mining area which was used for mining activities. The appellant contends that the properties were maintained and

developed by it.

3. The subject-matter of the suit are properties bearing Survey nos.80/2, 61/0 and 59/1 of village Sirigao. The appellant confirms its possession and occupation over the aforesaid properties, vide public documents in Form Nos. I and XIV. According to the appellant, the name of one Damu Soma Bhaje which appears in the such proforma was erroneously recorded in the tenants column no.61/0 whereas, in fact, neither the said Damu Soma Bhaje nor his family members claimed any right, title or interest in the said properties.

4. According to the appellant, there are various kinds of fruits bearing trees in the said properties, as referred to in the plaint, in which the respondents are interfering with by creating obstruction to the appellant and its employees from entering into properties with the sole intention to grab it. The respondents were also interfering with the suit properties by attempting to carry out construction and by trespassing into the suit properties of the appellant. The appellant, therefore, lodged a complaint with the police.

5. The appellant further contends that earlier Regular Civil Suit No.77/1978 filed by the appellant was dismissed on account of non-examination of the person, who had verified the pleadings.

6. Another Civil Suit bearing No.101/93/A filed by the appellant also came to be dismissed in default. The appellant had, therefore, prayed for an equitable relief of interim injunction restraining the respondents from interfering with peaceful possession of the appellant over the suit properties.

7. In the written statement/reply, the respondents have come with a plea of *res judicata* on account of dismissal of earlier suits in respect of the same properties. According to the respondents, the properties known as, "MUDDY" is an old Cadastral Survey no.22, which consists of additional numbers than what has been mentioned by the appellant. The Sale Deeds, as referred to by the appellant in the plaint, have been executed by it by taking undue advantage of the poor condition of Vendors and, therefore, said Sale Deeds, according to the respondents, are false, fabricated, bogus and not in accordance with law. Even the respondents had challenged the entries in the

Form Nos.I and XIX to be wrong, as the respondents contend that they have been in possession and enjoyment of the properties for last more than 100 years.

8. It is further contended that the trees existing in the suit properties have been planted by the respondents and, therefore, they have a right to pluck the fruits as well as harvest the crops. The respondents have denied rest of the averments in the plaint. The respondents further contends that T.C.4/49 is not a mining lease area nor the said properties have any relevant to the said T.C.no.4/49. The appellant has tendered an affidavit of its employee and that there are no independent witnesses in order to support the appellant's contention.

9. The learned trial Court, after going through the record and after hearing the respective counsel, by the impugned order, rejected the application for temporary injunction against which the appellant has approached this Court.

10. I have heard the learned counsel appearing for the respective parties.

11. The learned counsel appearing for the appellant has argued that in the light of the fact that the appellant has title and is in possession of the suit properties by virtue of the copies of the Sale Deeds tendered on record coupled with an affidavit, the learned trial Court ought to have considered this aspect while deciding the application for temporary injunction. According to the learned counsel, the trial Court erred in observing that there was no affidavit by any third person or any independent witness. It is also the submission of the learned counsel that the appellant has been carrying on mining activities covered mining lease area wherein the appellant had developed a road within the mining lease area which was used for mining activities, more particularly, in Survey no.61/0 and 59/1 of Sirigao. As such, according to the learned counsel appearing for the appellant, the reasons given by the learned trial Judge in the impugned order are perverse and unsustainable in law.

12. Per contra, Shri Walmiki Menezes, learned counsel appearing for the respondents, took me through a few documents on record in order to substantiate that the appellant could not co-relate the Cadastral Survey no.22 and the new survey numbers in order to prove that the respondents, in fact, had interfered or encroached upon the

mining area in the possession of the appellant. He submits that Survey no.80/2 was not purchased by the appellant in its entirety. It is not clear as to which portion of said survey number has been purchased by the appellant, who claims possession of part of the earlier Cadastral Survey no.22. Thus, for want of proper description, according to the learned counsel for the respondents, there is no prima facie case nor balance of convenience shown to have existed in favour of the appellant. It is also submitted that there is no plan annexed to the plaint as regards the area in actual possession of the appellant. The learned counsel has, therefore, supported the impugned order passed by the learned Senior Civil Judge.

13. While granting an equitable relief of temporary injunction, the plaintiff has to establish a prima facie case coupled with balance of convenience in his/its favour and irreparable loss. The plaintiff must establish that in case of refusal of an equitable relief, the loss would be such, which cannot be compensated in terms of money. There is also equally, no doubt, that merits of the case are not to be gone into but what is required to be seen is that there are serious question of law and facts involved in the case. The conduct of the plaintiff is also material while considering

grant of relief of temporary injunction.

14. The learned counsel for the appellant submits that the trial has already commenced and witness of plaintiff/appellant is under cross-examination. That being so, as a matter of fact, it is not necessary to go into the minute details and the observations made by the learned trial Court in the impugned order, more particularly, in the light of ratio laid down by the Hon'ble Supreme Court in the case of **Mohd. Mehtab Khan and others Vs. Khushnuma Ibrahim Khan and others** [(2013) 9 SCC 221]. The ratio *Decidendi* is that where the trial Court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in a serious doubt, the appellate court could not have interfered with the exercise of discretion by the trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed by the trial Judge do not indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of

jurisdiction while hearing an appeal against a discretionary order. While it is not said that the appellate court was wrong in its conclusions what is sought to be emphasised is that as long as the view of the trial Court was a possible view the appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by the Supreme Court in *Wander Ltd. Vs. Antox India (P) Ltd.* 1990 Supp SCC 727.

15. In view of the aforesaid ratio laid down by the Hon'ble Supreme Court, if the plaintiff's case vis-a-vis the defendants' contention are *juxtaposed*, it is apparent that though the appellant tried to show its possession over the suit properties where its mining activities are being involved, still it is not clear as to which part of old Cadastral Survey number of Sale Deed dated 30.4.1973 pertains to. The learned trial Court by the impugned order has, therefore, rightly observed that the Certificate dated 1st January, 2014 issued by the Land Survey Department annexed with old Survey no.22 is consisting of number of other properties other than the suit properties. The Sale Deed dated 30.4.1973 is in respect of the Old Cadastral Survey no.22. Obviously when the appellant state that the suit properties are covered by Survey nos. 80/2, 61/0 and

59/1, then it has to show as to by which Sale Deed the appellant has become owner of the said survey numbers. Apart from that, there is no satisfactory material brought to fore by the appellant to substantiate that the part of the properties known as "MUDDY" which was old Survey no.22 and present Survey nos.59/1, 61/0, 80/1, 80/2, 80/4, 80/5 are being trespassed or encroached upon by the respondents, as alleged. The learned counsel for appellant has drawn my attention to an order of the Government of Goa bearing No.96/53/87/II R-Mines/2535 dated 3.11.2010 in exercise of powers conferred by sub section (2) of Section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 read with sub rule (3) of Rule 24A of Mineral Concession Rules, 1960 was pleased to renew the mining lease (T.C.No.4/49) in favour of the plaintiff for undertaking mining operations for iron and Bauxite ore over an area of 96.00Ha of land situated in Village Sirigao of Bardez Taluka for a period of 20 years effected from 22.11.2007 upto 21.11.2017. Nevertheless, that itself is not sufficient to indicate that the balance of convenience tilts in its favour. It is equally important to see that earlier two suits based on similar grounds allowed to be dismissed by the appellant against which at this stage, there is nothing to show that an attempt was made for restoration

of those suits. This is also an important aspect to consider balance of convenience. The appellant could have produced a duly prepared plan of the suit properties in order to substantiate its case indicating boundary/lanes of the properties which are in its possession by virtue of the aforesaid Sale Deeds.

16. Thus, in the light of the observations made hereinabove and after having gone through the impugned order as well as ratio laid down by the Hon'ble Supreme Court, I am of the opinion that the impugned order does not warrant interference in appeal. The parties shall co-operate the trial Court in disposal of the suit. As such, the appeal stands dismissed, with no order as to costs.

PRITHVIRAJ K. CHAVAN, J.

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