

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 76 OF 2006

1. Smt. Malava Gidappa Harijan
Housewife, major,
Resident of St. Inez, Panaji, Goa.
2. Smt. Vaishali Harijan,
Major, daughter in law,
R/o. Near Thakur Garage,
St. Inez, Panaji, Goa.
3. Smt. Basavva Harijan,
Major, daughter,
R/o. Near Thakur Garage,
St. Inez, Panaji, Goa. Appellants

V e r s u s

1. Shri Shantaram Naik,
Through legal heirs
 - a) Mr. Deepak Shantaram Naik, (son)
aged 42 years,
 - b) Sunanda Shantaram Naik (Wife)
w/o Late Shantaram Naik,
Aged 68 years,
 - c) Beena Deepak Naik (daughter in law)
w/o. Deepak Shantaram Naik
All residents of Plot no. 38,
H. No. 1680, Journalist colony,
Porvorim, Bardez, Goa.
 - d) Roshan Kishore Savant (daughter)
w/o Kishore Savant
Aged 39 years,
 - e) Kishore Savant (son in law)
Aged 42 years,
Both resident of Flat No. 6,
Dhanashree apartments,
Gogal, Margao, Goa.
 - f) Sushma Purshottam Prabhugaokar (daughter)
w/o Purshottam Prabhugaokar

- g) Purshottam Prabhugaokar (son in law)
Both resident of H. no. 771,
Gaonkarwada, Maye,, Bicholim,
Bardez, Goa.
 - h) Nandita Ankush Dalvi (daughter)
w/o Ankush Dalvi
 - i) Mr. Ankush Dalvi (son in law)
Both resident of
H. No. 244/A, Dabas Valpoi,
Sattari, Goa.
- 2. Smt. Kamala Garu,
Major, daughter
R/o. Flat No. K-4, Gausavaddo,
Presently r/o. U.K.
 - 3. Smt. Laxmi Harijan,
Major, daughter
R/o. Near Thakur Garage,
St.Inez, Panaji, Goa.
Prsently r/o USA.
 - 4. Smt. Madhavi Hegde,
Major, daughter
R/o Near Thakur Garage,
St.Inez, Panaji Goa.
Presently r/o USA.
 - 5. The Corporation of City of Panaji
Through its Commissioner,
Panaji Goa. Respondents

Mr. S. Karpe and Mr. V. Pangam, Advocates for the Appellants.

None for the Respondents.

Coram :- **F. M. REIS, J**

Date : **21st July, 2017**

ORAL JUDGMENT

Heard Mr. S. Karpe, learned Counsel appearing for the Appellants.

None for the Respondents, though duly served.

2. The above Appeal came to be admitted on 11.12.2006 on the following substantial questions of law :

(i) Whether after holding that there was suppression of fact by the respondents while submitting the plans for approval and the respondent no.1, had presented the plan to the then Municipal Council of Panaji after demolishing the kitchen portion of the hut of the appellants, the 1st Appellate Court could have held that the respondent no.1 was entitled to put up the construction pursuant to the said licence granted in favour of respondent no.1 was not in violation of any rules, byelaws or laws.

(ii) Whether he finding that clause 32 I(b) of the Panjim Municipal Council Building Bylaws Regulation 1975, which provides for minimum size of the plot are applicable only where subdivision of plot is effected and whether the regulation pertaining to maintenance of 3 mts. setback. Rule 32 I (e) (iii) which provides for 3 mts. setback from the plot boundary could be relaxed especially in a case where admittedly the respondent no.1 was permitted to take light and air from that side ?

3. Mr. S. Karpe, learned Counsel appearing for the Appellants has taken me through the Judgments passed by the learned Trial Judge whereby the Suit filed by the Appellants was partly Decree in terms of prayer (a) and a(a) by

Judgment dated 30.11.2001. The learned Counsel further submits that the Judgment passed by the Trial Judge came to be challenged by the Respondents before the Lower Appellate Court which came to be disposed of by Judgment and Decree dated 11.08.2005 whereby the Appeal was partly allowed and the Decree passed by the learned Trial Judge came to be modified where upon the relief a(a) was set aside and the Respondents, their servants, their agents, were permanently restrained from doing any construction or performing any other act so as to effect the right of light and air of the Appellants from the set back area to the south of the proposed construction. The Respondents were also directed to maintain a free unobstructed access of 1.5 metres on the western side of the proposed construction under the extended first floor for the use of the Appellants as an access from the property surveyed under chalta no. 17 up to the road on the northern side of chalta no. 18. The Cross Objections filed by the Appellants were also granted thereby directing the Respondents to restore the kitchen room of the Appellants by constructing the same with tin sheets with dimension as shown in the Survey Plan.

4. Mr. S. Karpe, learned Counsel appearing for the Appellants, submits that the Appellants are the owners in possession of the property, inter alia, bearing chalta no. 17 of P.T. Sheet no. 83. Learned Counsel further submitted that the property of the Respondents is surveyed under no. 18 of P. T. Sheet no. 83. Learned Counsel has thereafter taken me through the City Survey Plan to point out that the eastern boundary of the property surveyed under chalta no. 17 is of irregular shape whereas the plans which were approved by the Respondents were

showing a straight boundary separating the boundary of the Appellants and the Respondents on the eastern side of the property surveyed under chalta no. 17. Learned Counsel further pointed out that the fact finding Courts have come to the conclusion that the portion of the property protruding on the eastern side of the property surveyed under chalta no. 17 of P. T. Sheet no. 83 were erroneously included in the property surveyed under chalta no. 18 belonging to the Respondents. Learned Counsel further submits that though the learned Judge had come to such conclusion that, the plans which were approved by showing such portion of the property which belongs to the Appellants, the learned Judge refused to grant the relief of cancellation of the licence. Learned Counsel further pointed out that for such limited relief, the present Appeal has been filed.

5. The Respondents though served, failed to remain present.

6. The fact finding Courts below have in fact come to the conclusion that the portion of property belonging to the Appellants surveyed under chalta no. 17 of P.T. Sheet no. 83, was included in the plan submitted by the Respondents. In such circumstances, considering the findings of fact arrived at by the Courts below, the Respondents are not entitled to carry out any construction activity in such portion of the land which is part of the property surveyed under chalta no. 17 of P. T. Sheet no. 83 belonging to the Appellants herein. The learned Judge whilst passing the impugned Judgment has reserved the right of access to proceed from the property surveyed under chalta no. 17 of P. T. Sheet no. 83 to the road located on the northern side having a width of 1.5 metres through the property surveyed under

Chalta no. 18. In such circumstances, the only apprehension of the Appellants is that in case fresh plans are submitted to the Corporation or the earlier plans are sought to be reviewed, the Respondents may include the land belonging to the Appellants surveyed under chalta no. 17 of P. T. Sheet no. 83 as belonging to the Respondents herein. This apprehension of the Appellant no longer survives in view of the categorical finding arrived at by the fact finding Courts to the effect that the property surveyed under chalta no. 17 of P. T. Sheet no. 83 belongs to the Appellants herein. In such circumstances, the question of including any such area in any plan intended to be submitted by the Respondents or seeking a revision of the existing plan, would not arise at all. Apart from that, even the Courts below have directed to re-construct the kitchen which was belonging to the Appellants which was located in the encroached area surveyed surveyed under chalta no. 17 of P. T. Sheet no. 83. These findings clearly suggests that the question of the Appellants showing any such area as belonging to the Respondents to seek a revision of the plans would not arise at all.

7. In view of the said findings, a blanket relief sought by the Appellants to set aside the plans approved by the Municipality, would not at all be justified. Be that as it may, the Respondents would not be entitled to include such area to be shown as belonging to the Respondents in any future plans submitted to the Authority.

8. Subject to the above, there is no case made out for any interference in the impugned Judgment passed by the Lower Appellate Court.

9. The Appeal stands accordingly disposed of.

F .M. REIS, J.

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