

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL No. 292 OF 2008

Mrs. Conceicao Fernandes,
W/o Francis Fernandes,
II Daddo, Talaulim, Navelim,
Salcete, Goa.

. Appellant
(Orig. Defendant No. 1)

V/s.

1. Shri Salvador Fernandes
son of Shri Sylvester Fernandes,
r/o H. No. 45, II Daddo,
Talaulim, Navelim,
Salcete, Goa. ... (*Orig. Plaintiff*)

2. The Sarpanch/Secretary,
Village Panchayat of Telaulim,
Navelim, Salcete, Goa.

3. The Senior Town Planner,
The Town and Country
Planning Department,
Margao, Goa.

4. The Chief Town Planner,
The Town and Country
Planning Department,
Panaji, Goa.

5. The Chief Secretary,
State of Goa, Porvorim,
Goa. ... (*Orig. Defdts. Nos. 2 to 5*).

... Respondents

Mr. A. F. Diniz, Advocate for the Appellant.

Mr. Valmiki Menezes, Advocate alongwith Mr. A. Shirodkar, Advocate for the Respondents No. 1 and 2.

Ms. Priyanka Kamat, Additional Government Advocate for Respondents no. 3 to 5.

Coram :- F. M. REIS, J

Date : 08th March, 2017.

ORAL JUDGMENT:

Heard Shri. A. F. Diniz, learned Counsel appearing for the Appellant, Mr. Valmiki Menezes, learned Counsel appearing for the Respondents No. 1 and 2 and Ms. Priyanka Kamat, learned Additional Government Advocate appearing for the Respondents no. 3 to 5.

2. The challenge in the above Appeal is to the Judgment and Decree in Civil Suit No. 29/2006 dated 18.10.2008 passed by the learned District Judge-3, South Goa, Margao, whereby the Suit filed by the Respondents is partly decreed in terms of prayer (a) thereby the Appellant No. 1 is permanently restrained in any manner from interfering with the user of or obstructing the other Plaintiff/Respondent herein from using the access or encroaching thereon by doing any construction.

3. The above Appeal was extensively argued by the learned Counsel appearing for the Appellants as well as the Respondents and the main dispute is with regard to the claim of access by the Respondent no. 1 in respect of an area reserved as an access whilst purchasing the plot which corresponds to the property identified in Survey No. 46/2-A of the Village Taulim which was purchased by the Respondent no. 1 herein. It is also

Corrections
Carried out
As per
Order dated
23.03.17

not disputed that the Appellant also purchased a plot admeasuring an area of ³⁶⁶336 sq.mts which is surveyed in the Record of Rights under Survey No. 46/1-AF. It was the contention of Mr. Menezes, the learned Counsel appearing for the Respondent no. 1 that though 3mt wide access is reserved between the plot purchased by the Appellant bearing Survey No. 46/1-AF and the plot purchased by the Respondent no. 1 bearing Survey No. 46/2-A, the subject 3mts wide access was not available at the side. In such circumstances, by an Order dated 22.07.2016, this Court directed the Land Survey Department to identify the plots purchased by the Appellant and the Respondent no. 1 in terms of the respective Sale Deeds and confirm the location of the 3mt wide access which is located in between the said two plots purchased by the Appellant and the Respondent no. 1 respectively. The Surveyor, has accordingly prepared a report and produced a Plan identifying the 3mt wide access in between the plot of the Appellant and the Respondent no. 1.

4. Mr. Diniz, the learned Counsel appearing for the Appellant does not raise any objection to the depiction as shown by the Court Commissioner in the said Plan which is marked as 'X' for identification attached to the letter dated 01.12.2016. Mr. Menezes, learned Counsel appearing for the Respondent no. 1, however, submits that though the Respondent does not dispute the location of the said 3mt wide access, there is a deficiency in the width of such access at loco. The dispute raised by Mr. Menezes, learned Counsel appearing for the Respondent is not required to be looked into in the

present Appeal as depiction of the subject access of 3mt as shown by the Court Commissioner has been accepted by Mr. Diniz, the learned Counsel appearing for the Appellant, upon instruction.

5. In such circumstances, I find that the above Appeal can be disposed of by recording that the injunction granted by the learned Trial Judge by the Impugned Judgment dated 18.10.2008 shall be in operation to the extent of the 3mt wide access as depicted by the Court Commissioner in the said plan marked at 'X' for identification as attached to the letter dated 01.12.2016.

6. In view of the above, the Impugned Judgment and Decree passed by the learned Judge stands modified to the extent that the injunction granted in the impugned Judgment shall be in operation with regard to the 3mt. wide access as shown in the Plan marked 'X' for identification. Decree to be drawn accordingly.

7. Appeal stands disposed of, accordingly.

F. M. REIS, J.

msr