

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 844 OF 2016

IN

STAMP NUMBER MAIN NO. 3340 OF 2016

M/S. SHIVKRUPA CONSTRUCTIONS
(BUILDERS, DEVELOPERS AND
CONTRACTORS) AND 2 ORS.,

... Applicants

Versus

MR. OLAVO BENEDITO PEREIRA AND 5
ORS.,

... Respondents

Mr. Shashikant Narayan Joshi with Mr. N. Aguiar, Advocates for the applicants.

Mr. G. Agni, Advocate for the respondent nos. 1 and 2.

Mr. Vishwadh Sardessai, Addl. Government Advocate for the respondent nos. 3, 4 & 5.

Coram:- F. M. REIS, J.

Date:- 2nd March, 2017

P.C.

Heard Mr. S. N. Joshi, learned counsel appearing for the applicants, Mr. Agni, learned counsel appearing for the respondent nos. 1 and 2 and Mr. V. Sardessai, learned Addl. Government Advocate appearing for the respondent nos. 3 to 5.

2. This is an application filed by the applicants to seek leave to challenge the judgment and decree dated 23.08.2016.

3. Mr. Joshi, learned counsel appearing for the applicants submits that leave sought by the applicants is in respect of the

said judgment wherein the subject matter of the premises belongs to the applicants. It is further pointed out that the respondents/plaintiffs have not made the applicants as parties to the said proceedings and obtained a decree against the Government Authorities. It is also pointed out that based on the complaint lodged by the applicants, a notice was issued to disconnect the water connection which was the subject matter of the said suit. It is also contended that another suit with regard to the same premises is pending adjudication before the Appellate Court wherein the respondents/plaintiffs are relying upon the judgment sought to be impugned by the applicants.

4. On the other hand, Mr. Agni, learned counsel appearing for the respondent nos. 1 and 2/plaintiffs has opposed the said application. It is pointed out that the applicants had knowledge of the proceedings as according to him during the course of the cross examination of the respondents/plaintiffs, the witness was extensively cross examined with regard to the pendency of such suit. It is further pointed out that as the applicants have not taken steps to get themselves impleaded in the suit, the question of granting any leave to the applicants to challenge the judgment would not arise. It is also pointed out that the applicants are not necessary parties to the suit filed by the respondents/plaintiffs. It is further pointed out that the applicants have no locus to challenge the judgment sought to be impugned and as such the

application be rejected.

5. I have considered the submissions of the learned counsel and I have also gone through the records. I do not intend to examine the rival contentions whether the applicants were necessary or proper parties to the suit filed by the respondents/plaintiffs wherein the impugned judgment was passed. The only aspect to be examined is whether the applicants would be affected by the judgment sought to be impugned by the applicants herein. It is contended by the applicants that they are owners of the property. In such capacity the respondents/plaintiffs have also filed a suit against the applicants. Apart from that, the notice under challenge in the suit filed by the respondents/plaintiffs was pursuant to the complaint lodged by the applicants themselves. In such circumstances, I find that the applicants are entitled for leave to challenge the judgment sought to be impugned as the dispute raised is referable to the stand taken by the applicants in the suit filed by the respondents/plaintiffs against the applicants. The contention of Mr. Agni, learned counsel appearing for the respondent nos. 1 and 2/plaintiffs that the applicants ought to have filed an application to get themselves impleaded in the suit in case they so desired cannot be accepted as the right to seek leave to challenge the judgment would only accrue to the applicants after the judgment is passed. In such circumstances, I find that the

applicants are entitled for leave to challenge the judgment sought to be impugned. Registry is accordingly directed to register the said appeal. Needless to say that all the contentions of parties on merits are left open.

6. The application stands disposed of accordingly.

F. M. REIS, J.

at*