

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 4 OF 2017

1. Mrs. Rukmini Baburao Fotto Dessai and anr
Wife of Shri. Baburao Srikant Fotto Dessai,
Major in age, housewife, Indian National,
residing at Maad, Bansai,
Cacora,
Taluka Quepem, Goa.

2. Mr. Baburao Fotto Dessai,
Son of Late Shri. Shrikant Fotto Dessai,
Major in age, Businessman, Indian National,
residing at Maad, Bansai,
Cacora,
Taluka Quepem, Goa.

.... Appellants

Versus

1. Curchorem-Cacora Municipal Council,
having its office at Station Road,
Curchorem,
Taluka Quepem, Goa.

2. Chief Officer, Curchorem-Cacora Municipal Council,
having its office at Station Road,
Curchorem,
Taluka Quepem, Goa.

3. Executive Engineer,
Office of the Executive Engineer,
Water Resources Department,
Works Division XIV,
Gogol, Margao, Goa.

4. Mamlatdar of Quepem Taluka,
Office of the Mamlatdar of
Quepem Taluka, Quepem,
Goa.

5. The Chief Secretary,
Government of Goa,
Secretariat - Porvorim,
Mapusa, Bardez, Goa.

.... Respondents

Mr. Iftikhar Agha, Advocate for the Appellant.

Mr. Ashwin D. Bhobe, Advocate with Ms. S. Bhobe, Advocate for Respondents no. 1 and 2.

Mr. Vishwadh Sardessai, Additional Government Advocate, for the Respondents no. 3, 4 and 5.

Coram :- F. M. REIS, J

Date : 09th March, 2017.

ORAL JUDGMENT:

Heard Shri. I. Agha, learned Counsel appearing for the Appellant, Shri A. D. Bhobe, learned Counsel appearing for the Respondents no. 1 and 2 and Shri V. Sardessai, the learned Additional Government Advocate appearing for the Respondents no. 3, 4 and 5.

2. Admit.

3. Heard forthwith with the consent of the learned Counsel. The learned Counsel appearing for the Respondents waive service.

4. The challenge in the above Appeal is to the Judgment dated 22.07.2016 passed by the learned District Judge-2, South Goa, Margao, whereby the Suit filed by the Appellant came to be dismissed on the basis of a preliminary issue framed by the learned Judge as to whether the Civil Court has jurisdiction to entertain and dispose of the Suit.

5. Briefly, the facts of the case is, the controversy in the above Appeal are that the Appellants who claim to be the owners in possession of an area of 1360 sq.mts in the property under Survey No. 476/1-A of the Village Cacora Quepem Town filed the Suit, inter alia, seeking for a permanent injunction restraining the Respondents from interfering with the compound wall and the construction put up by the Appellants in the said property. The cause of action in filing the Suit was a show cause notice served on the Appellants by the Respondents no. 1 and 2 under Section 184 of the Municipality Act, 1968 in connection with the subject compound wall. It is the contention of the Appellants that the property belongs to the Appellants and all statutory permissions required for putting up the compound wall as well as the residential house located in the subject property were obtained way back in the year 1984. It is further the case of the Appellants that the Respondents without any right are contemplating to take steps to demolish the compound wall on account of instigation by some vested interests who are not in good terms with the Appellants. Accordingly, the Suit was filed, inter alia, praying for a permanent injunction to restrain the Respondents from interfering with the compound wall or the residential house existing therein. The Respondents filed their written statements disputing the claim put forward by the Appellants and, inter alia, also raised the contention that the Civil Court has no

jurisdiction to decide the Suit filed by the Appellants. The contention raised by the respective Respondents are not material to decide the matter in controversy in the present Appeal. The learned Judge, after framing a preliminary issue, by the impugned Judgment dated 22.07.2016, dismissed the Suit filed by the Appellants on the ground that the Civil Court has no jurisdiction to decide the subject Suit. Being aggrieved by the said Judgment, the Appellants have preferred the present Appeal.

6. Mr. I. Agha, the learned Counsel appearing for the Appellants has pointed out that on the same ground the application for temporary injunction came to be rejected by the learned Trial Judge which was set aside by this Court by Order 21.10.2016 in Appeal from Order No. 39 of 2016, whereby, the Respondents were restrained from taking any action with regard to the compound wall in the property under Survey No. 476/1-A of Cacora Village of Quepem Taluka. The learned Counsel further submits that this Court found that the findings rendered by the learned Judge that the Civil Court has no jurisdiction were not sustainable in law. It is further pointed out that on the same grounds thereafter the learned Judge dismissed the Suit filed by the Appellants by framing a preliminary issue. It is further pointed out that the contention of the Respondents that there was acquisition of land in the year 1995 which forms part of the land belonging to the Appellants is seriously

disputed by the Appellants, as, according to him, no land belonging to the Appellants was subject matter of any acquisition. Learned Counsel further submits that as the title claimed by the Respondents itself is under challenge in a Suit filed by the Appellants, the learned Judge was not justified to pass the impugned Judgment and dismiss the Suit. It is further pointed out that the learned Judge has also erroneously found that the Suit is barred under Section 289 of the Municipality Act when the said provisions itself provide that it shall not be applicable to Suit filed under Section 38 of the Specific Relief Act. The learned Counsel further pointed out that the learned Judge has erroneously come to the conclusion that the Suit is barred under the provision of the Goa Land (Prohibition of Construction) Act, 1995. The learned Counsel has, thereafter, taken me through the pleadings as well as the impugned Judgment to point out that there is a substantial question of law which calls for interference by this Court.

7. On the other hand, Mr. A. D. Bhobe, the learned Counsel appearing for the Respondents no. 1 and 2 submits that the dispute raised by the Appellants is essentially against the State Government as, according to him, the action initiated by the Appellants is based on a claim put forward by the State Government. The learned Counsel appearing for the Respondents submits that the Respondents raised the bar of jurisdiction on the assumption that the

proceedings would be initiated under the provisions of the Goa Land (Prohibition of Construction) Act, 1995. It is further pointed out that the subject wall located in the property belongs to the State Government.

8. I have duly considered the rival contentions and with the assistance of the learned Counsel, I have gone through the records and based thereon the following points for determination arise :

a) Whether the learned Judge was justified by the impugned Judgment dated 22.07.2016. to dismiss the Suit on the preliminary issue that the Civil Court has no jurisdiction to interfere in the Suit.

9. It cannot be disputed that an issue of jurisdiction is a mixed question of law and fact. In the present case the Appellants are seriously disputing the stand taken by the State Government that a portion of the land belonging to the Appellant is the subject matter of the Land Acquisition. Unless this aspect is dealt with by the Court, the question of examining whether the Civil Court has jurisdiction or otherwise is not at all justified. Apart from that, there is no conclusive evidence produced on record by the Respondents that any action was in fact initiated by the concerned authorities in terms of the said Goa Land Prohibition of Construction Act, 1995. On the basis of such assumption, the learned Judge was not justified to hold that the Suit is barred in terms of the said Act when, admittedly, no such action was either initiated or contemplated

by the Respondents herein. In such circumstances, the findings of the learned Judge that the Suit is barred under the said provisions is merely on assumption and without any material on record to substantiate that any action was taken by the Respondents based on the said provisions.

10. With regard to the findings of the learned Judge that the Suit is also barred under the Specific Relief Act, on plain reading of the provisions such bar does not impeach the Suit filed under Section 28 and 39 of the Specific Act. It is not in dispute that the Suit filed by the Appellants is for permanent injunction under Section 38 of the Specific Relief Act. Hence, the findings of the learned Judge on that count cannot be sustained and deserve to be quashed and set aside.

11. For the above reasons, as the bar of jurisdiction is a mixed question of law and fact, any findings thereon would depend on the findings on the claim of the Appellants that the property of the Appellant was not subject of any acquisition.

12. As such, I find that the learned Judge was not justified to pass the impugned Judgment and dismiss the Suit on the ground that the Civil Court has no jurisdiction based on the preliminary issue.

13. In view of the above, I pass the following:

ORDER

- i) The Appeal is partly allowed.
- ii) The Impugned Judgment and Decree dated 22.07.2016 is quashed and set aside.
- iii) The learned Judge is directed to decide the Suit after hearing the parties on all issues including the issue of jurisdiction afresh after evidence is recorded in accordance with law.
- iv) Parties are directed to appear before the learned Judge on 10.04.2017 at 10:00 a.m.
- v) Appeal stands disposed of, accordingly.

F. M. REIS, J.

msr