

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 77 OF 2016**

1) Shri Shashikant Rama Naik
Borkar, son of late Rama Naik Borkar,
aged about 72 years, married,
business,

2) Smt. Rajni Shashikant Naik Borkar,
wife of Shri Rama Naik Borkar,
aged 62 years, housewife,
Both residents of Deulbhat,
Borim, Ponda-Goa.
(Registered Addresses)

... Petitioners

Versus

Shri Arun Balkrishna Devari,
son of late Shri Balkrishna Dewari,
age about 55 years, married, landlord,
resident of House no.171,
near Navdurga Temple,
Borim, Ponda-Goa and 3 other

... Respondents

Mr. V. Rodrigues, Advocate for the Petitioners.

Mr. G. Agni with Mr. E. Usapkar, Advocates for Respondent
nos.1, 2 and 3.

Mr. C. Marcelo, Advocate for Respondent no.4.

Coram:- C. V. BHADANG, J.
Date:- 8th February, 2017.

Order:

The challenge in this petition at the instance of the

petitioners, who are the original defendant nos. 1 and 2 is to the judgment and order dated 15/9/2015 passed by the learned District Judge in Misc. Civil Appeal No.99/2013. The learned District Judge while dismissing the appeal has confirmed the order dated 10/2/2012 passed by the learned Trial Court by which the parties are directed to maintain status quo.

2. The respondent nos.1,2 and 3 herein are the original plaintiffs, while the respondent no.4/Village Panchayat is the defendant no.3 before the trial Court.

3. For the sake of convenience the parties are referred to in their original capacity as plaintiffs and defendants.

4. The plaintiffs filed a suit for permanent injunction and damages in which they sought temporary injunction. The learned trial Court by an order dated 10/2/2012 partly allowed the application directing the parties to maintain

status quo as depicted in photographs dated 18/6/2011 at Exhibit 10-D. Feeling aggrieved, the petitioners challenged the same before the learned District Judge who by the impugned judgment has dismissed the appeal.

5. I have heard Shri Rodgriues, the learned counsel for the petitioners and Shri Agni, the learned counsel for the respondent nos.1 to 3. I have also heard Shri Marcelo, the learned counsel for the respondent no.4. The contesting parties are essentially the petitioners and the respondent nos.1, 2 and 3. With the assistance of the learned counsel for the parties, I have gone through the impugned judgment and order passed by the learned trial Court as well as the appellate Court.

6. It is contended by the learned counsel for the petitioners that the petitioners have obtained a valid construction licence from the Village Panchayat, Borim for reconstruction of the residential house. It is submitted that the said licence is obtained on the basis of a No Objection

Certificate (NOC) from the Town and Country Planning Department. It is submitted that on obtaining the said licence the petitioners have demolished the existing structure standing in survey no.264/3 and on account of the impugned order are prevented from undertaking the reconstruction. It is submitted that as a result of the same, the petitioners are forced to reside in a cowshed standing in land survey no.264/5. The learned counsel has extensively taken me through the impugned order of the learned trial Court and of the learned District Judge in order to submit that the house of the defendants is recorded in 'Other Rights Column' of survey no.264/3 as "house of Shashikant Rama Borkar" and in respect of the structure in survey no.364/5 as "cowshed of Shashikant Rama Borkar". It is submitted that the suit house was in existence since long and on the basis of the such long standing possession, the petitioners are entitled to reconstruct the house, particularly when, the Village Panchayat on the basis of the NOC from the Town and Country Planning Department has granted permission for the construction. He, therefore, submits that the Courts below

were in error in granting an order of status quo, which has the effect of restraining the petitioners from undertaking the re-construction.

7. On the contrary it is submitted by the learned counsel for respondents nos.1 to 3 that the petitioners have not shown any semblance of a right and capacity in which they are claiming to be in possession of the suit house. It is submitted that in the absence of the same, the petitioners cannot take exception to the order of status quo. It is submitted that as on date, the house does not exist, as it has been demolished by the respondents themselves, as has been held by the learned trial Court in para 47 of the impugned order. It is further submitted that the petitioners are trespassers in the suit property as they have been restrained from interfering with the same by a judgment and decree in R.C.S. NO.38/1976 and 46/1988 and therefore, the act of reconstructing the suit house is illegal.

8. I have carefully considered the rival circumstances

and the submissions made. At this stage prima facie the petitioners have neither alleged nor shown the capacity in which they are claiming to be in possession of the part of the land in survey no.264/3 on which the house was standing. The petitioners have themselves demolished the house, with a view to reconstruct the same. The mere obtaining of the permission from the Village Panchayat by itself cannot take the case of the petitioners any further. The trial Court in para 52 of the impugned order has framed the point, namely, whether the suit house was protected by the order in RCA No.31/1990 (arising out of RCS NO.38/1976) and if yes, whether the protection of the house was for perpetuity and whether the order of protection, if any, would also apply, now that the suit house has been demolished. The learned trial Court in para 53 of the impugned judgment has considered the relevant part of the order of the learned District Judge and has found and to my mind rightly so that the part of the order relating to mandatory injunction was only set aside. The learned trial Court has in fact balanced the equities, while directing the maintenance of status quo as the

petitioners are presently accommodated in the structure in land survey no.264/5 (which is referred to as a cowshed). It is not disputed that in RCS no.49/1988 which was filed by now deceased Dinanath Devari (since deceased) against the petitioners, there is a decree dated 29/1/1992 by which the petitioners have been restrained from carrying out any modification, addition, alterations, renovations or repairs to the suit house or any part thereof including the suit structure existing in the suit property. It is not in dispute that the said judgment and decree has attained finality. In such circumstances and in the face of such an order the petitioners cannot be permitted to reconstruct the house merely because they have a construction licence in their favour.

9. I have carefully gone through the order passed by the learned trial Court and the appellate Court and I do not find that they suffer from any infirmity so as to require interference. The writ petition is accordingly dismissed with no order as to costs.

10. At this stage the learned counsel for the petitioners requests that the suit be expedited. The learned counsel for the respondents points out that the suit is already part heard and presently PW.1 is under cross examination. The suit is of the year 2011. In that view of the matter the trial Court shall decide the suit as expeditiously as possible. Parties to co-operate for early disposal of the suit.

C. V. BHADANG, J.

ap/-