

IN THE HIGH COURT OF BOMBAY AT GOA**MISCELLANEOUS CIVIL APPLICATION (MAIN)**
NO. 987 OF 2016

M/s Shivkrupa Constructions (Builders,
Developers & Contractors) & 2 Others ... Appellants

Versus

Mr. Olavo Benedito Pereira & 2 Others ... Respondents

Mr. Shashikant Narayan Joshi, Advocate for the Appellants.

Mr. Gaurish N. Agni, Advocate for the Respondent Nos. 1, 2 & 3.

Mr. Vishwadh Sardessai, Additional Government Advocate for
the Respondent Nos. 1, 2 & 3 (in First Appeal No.49/2017).

CORAM:- C.V. BHADANG, J.
DATE:- 26th JULY, 2017.

ORAL ORDER:

By this application, under Section 24 of the Code of Civil Procedure, 1908 (CPC, for short), the appellants are seeking transfer of Regular Civil Appeal No. 119/2016, pending on the file of the learned District Judge, Panaji sitting at Ponda, to this Court, for being heard alongwith First Appeal No. 49/2017.

2. The brief facts are that the respondent nos. 1 and 2 had filed Regular Civil Suit No. 109/2012/A, against the appellants before the learned Senior Civil Judge at Ponda,

seeking permanent injunction against the appellants from demolishing the House No. 414/4 or any part thereof and restraining them from evicting/dispossessing the respondent nos. 1 and 2, from the said suit tenement.

3. It appears that on 23.01.2013, the appellant no. 3 lodged a complaint to the Public Works Department (PWD), complaining that the water connection, obtained by the respondent nos. 1 and 2, was obtained fraudulently. Acting on the said complaint, the PWD issued a notice to disconnect the water connection on 04.02.2013. The respondent no. 1, filed Civil Suit No. 10/2013 before the learned District Judge, Panaji sitting at Ponda, against the State of Goa and the PWD Authorities, challenging the said notice of disconnection. Undisputedly, the appellants were not made party-defendants to the said suit.

4. The learned District Judge, decreed the suit by judgment and order dated 23.08.2016. The petitioners filed Miscellaneous Civil Application No. 844/2016, before this Court seeking leave to challenge the judgment and decree dated 23.08.2016, passed in Civil Suit No. 10/2013. This Court by an order dated 27.10.2016 has granted leave and consequently,

First Appeal No. 49/2017 is registered and is pending before this Court.

5. On 27.10.2016, the learned Trial Court dismissed the Regular Civil Suit No. 109/2012/A. Feeling aggrieved, the respondent nos. 1 and 2 have challenged the same in Regular Civil Appeal No. 119/2016 before the learned District Judge, Panaji sitting at Ponda. The appellants are seeking transfer of the said Regular Civil Appeal No. 119/2016 to this Court, for being heard alongwith First Appeal No. 49/2017.

6. I have heard Shri Joshi, the learned Counsel for the appellants and Shri Agni, the learned Counsel for the respondent nos. 1 and 2. With the assistance of the learned Counsel for the parties, I have gone through the impugned judgment passed by the learned District Judge as well as the learned Senior Civil Judge at Ponda and perused record.

7. In Civil Suit No. 10/2013, which was filed against the Government of Goa and PWD Authorities, the learned District Judge had framed the following issues:

- | <i>S.No.</i> | <i>Issues</i> |
|--------------|---|
| 1. | <i>Whether the plaintiff proves that his late father was the occupant of the suit tenement bearing house no.414/4 on rent</i> |

from the landlord Shri Raghunath Pai Raikar Bab ?

2. *Whether the plaintiff proves that his late father was the tenant of the suit tenement since last 40 years ?*
3. *Whether the plaintiff proves that his brother Savio Bento Pereira filled forms showing wrong house number ?*
4. *Whether the plaintiff proves that the letter of disconnection dated 04.02.2013 is arbitrary and illegal ?*
5. *Whether the defendants prove that there is no cause of action to file the suit ?*
6. *Whether the defendants prove that this Court has no jurisdiction to try the suit ?*
7. *Whether the defendants prove that the plaintiff misled and the defendant no. 3 by showing wrong house number fraudulently obtained water connection ?*
8. *Whether the defendants prove that the suit is bad for statutory notice provided under Section 80 CPC ?*

8. The learned District Judge answered issue nos. 1, 3 and 4 as proved, while issue nos. 2, 5, 6, 7 and 8 as not proved. In the face of the findings, the learned District Judge has decreed the suit, restraining the PWD Authorities from disconnecting the water connection to the suit tenement.

9. In Regular Civil Suit No. 109/2012, the Trial Court had framed the following issues:

- | <i>S.No.</i> | <i>Issues</i> |
|--------------|---|
| 1. | <i>Whether the plaintiff proves that the suit tenement was occupied by their father partly for residence and partly for storage of commercial goods for more than 60 years and thereafter its possession continued with plaintiff as tenant ?</i> |
| 2. | <i>Whether the plaintiff proves that defendants are trying to evict plaintiff from suit tenement by demolishing it without following due process of law ?</i> |
| 3. | <i>Whether the defendants prove that suit tenement was in possession of Digamber Naik and after signing agreement dated 06.12.2012, he vacated it ?</i> |
| 4. | <i>Whether the defendants prove that the plaintiffs have no right, title or interest of whatsoever nature and that they were not in possession of the tenement no.414/14 at any point of time and that the present suit filed by them is frivolous, vexatious and liable to be dismissed with costs ?</i> |

10. The learned Trial Court answered issue nos. 1 and 2 in the negative, while issue nos. 3 and 4 were deleted. The Trial Court dismissed the suit in the face of the findings against issue nos. 1 and 2.

11. The contention on behalf of the appellants is that the finding as against issue no. 1 in the Civil Suit No. 10/2013, may come in his way in Regular Civil Appeal No. 119/2016, pending before the learned District Judge, Panaji sitting at Ponda.

12. On a careful consideration of the circumstances and the submissions made, it appears that the only issue before the learned District Judge in Civil Suit No. 10/2013 was whether, the water connection was obtained by respondent nos. 1 and 2 by practicing fraud. The appellants are disputing that the respondent nos. 1 and 2 (plaintiffs in Civil Suit No. 10/2013) are in occupation of the suit tenement. The dispute involved in Regular Civil Suit No. 109/2012/A is much wider and thus, I find that instead of transferring the Regular Civil Appeal No. 119/2016, pending before the learned District Judge to this Court, it would be appropriate if, the learned District Judge is directed to decide the said appeal, without being influenced by the observations and the findings recorded in the judgment and decree dated 23.08.2016 and more particularly, against issue no.1. Ordered accordingly.

With this, the application is disposed of.

C.V. BHADANG, J.

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