

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 704 OF 2017**

1. Shri Balchandra Anant Wagle, 71 years of age, son of late Anant Wagle, r/o House No. 624, Tonca, Caranzalem, Tiswadi-Goa.
2. Pramila Balchandra Wagle, 69 years of age, w/o Balchandra Anant Wagle, r/o House No. 624, Tonca, Caranzalem, Tiswadi-Goa. Petitioners

Versus

1. Shri Umesh S. Kundaikar, son of Shri Sonu Kundaikar, major of age, r/o H. No. 22, Khumbarwado, Morambi-O-Grande, Mercês-Goa.
2. Shri Surya S. Kundaikar, son of Shri Sonu Kundaikar, major of age, r/o H. No. 22, Khumbarwado, Morambi-O-Grande, Mercês-Goa.
3. Mrs. Manda S. Kundaikar, wife of Shri Surya Kundaikar, major of age, son of Shri Sonu Kundaikar, major of age, r/o H. No. 22, Khumbarwado, Morambi-O-Grande, Mercês-Goa.
4. Mr. Ronny Fernandes, son of late Mr. Romeo Fernandes, major of age, r/o H. No. 250, Khumbarwado, Morambi-O-Grande, Mercês-Goa.
5. Mr. Mahabaleshwar V. Priyolkar, son of late Shri Vishnu Priyolkar, major of age, r/o H. No. 243, Khumbarwado, Morambi-O-Grande, Mercês-Goa.
6. Mrs. Meena Priyolkar, wife of Mr. Mahabaleshwar V. Priyolkar, major of age, r/o H. No. 243, Khumbarwado, Morambi-O-Grande, Mercês-Goa.
7. Mr. Datteshwar V. Priyolkar, son of late Vishnu Priyolkar, major of age,

r/o H. No. 243, Khumbarwado,
Morambi-O-Grande, Mercês-Goa.

8. Dilsha D. Priyolkar, wife of Mr.
Datteshwar Priyolkar, major of age,
r/o H. No. 243, Khumbarwado,
Morambi-O-Grande, Mercês-Goa. Respondents

Shri Ashwin D. Bhobe, Advocate for the Petitioners.

Shri Prasheen Lotlikar, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.

Reserved on : 26th September, 2018

Pronounced on : 1st November, 2018

JUDGMENT:

On 14.08.2017, a notice for final disposal was issued in this petition. I have heard the learned Counsel for the parties and the petition is being disposed of finally.

2. By this petition, the petitioners, who were the original plaintiffs, are challenging the order of dismissal of their application for temporary injunction.

3. The land survey no.276/1 of village Morambi-O-Grande, admeasuring 87,439 square metres, is the subject matter of dispute(hereinafter referred to as the suit property). According to the petitioners, the suit property is predominantly a coconut garden with some scattered fruit bearing trees, such

as mango trees, jackfruit trees and tamarind trees. There are some houses situated in the suit properties, which are occupied by different persons. According to the petitioners, the entire suit property is in their lawful possession, excluding that part of the suit property, which has different houses situated in it. According to the petitioners there are about 1200 coconut trees in the suit property, which are plucked and the usufruct is enjoyed by the petitioners. Further, according to the petitioners one Kishor Naik, resident of Saligao was working as the Mukadam for about 50 years, who was looking after the property on behalf of the petitioners, until he stopped working on account of his old age and ill health. The name of the petitioners is shown as occupants in Form I and XIV and there are no tenants existing in the suit property. The petitioners however did not dispute that there are certain cases for declaration as a tenant, filed in respect of some portion of the property. According to the petitioners, the cases are false and are based on fabricated pleadings.

4. According to the petitioners, in the portion of the suit property, which is located on the eastern side, admeasuring about 19,052 square metres, there is a house, which is registered in the name of the petitioners, with the Village

Panchayat and they are in process of developing the said portion by constructing a residential cum commercial complex. The petitioners have obtained the necessary development permission, conversion sanad and other approvals for undertaking the said development. However, there was obstruction from the respondents/defendants somewhere in the month of June/ July, 2012 and thereafter, in December, 2014 and June, 2015, which led the petitioners to file a complaint before the police on 02.06.2015. In short, according to the petitioners, the respondents have no right in the suit property and they have no right to interfere with the development work by the petitioners. There is a categorical statement made in para 17 of the plaint that the petitioners did not intend to interfere “with the residential houses of the defendants at this stage, except under due process of law”.

5. In that view of the matter, the petitioners filed Regular Civil Suit No.240/2015 before the learned Senior Civil Judge at Panaji for permanent injunction, restraining the respondents or anybody on their behalf from interfering with the “eastern portion of the suit property”, wherein the petitioners are undertaking the development work and/or from obstructing the said development work.

6. The petitioners sought a temporary injunction in the aforesaid terms before the learned Trial Court.

7. The respondent nos.1, 2, 3 and four others resisted the application *inter alia* on the ground that the suit is not maintainable and is bared by limitation. It was contended that the respondent nos.1, 2 and 3 (defendant nos.1, 2 and 3) alongwith others have filed a Tenancy Case No.17/2012, before the Mamlatdar claiming that the portion of the suit property admeasuring 3,520 square metres is held by them as tenants. It is stated that the same is more specifically described in the application filed before the Mamlatdar. In short, according to the respondents they are tenants in possession and enjoyment of 3,520 square metres alongwith the dwelling house bearing house no.22, having built up area of 110 square metres. Thus, the total area in their possession is 3,630 square metres.

8. The defendant nos. 5, 6, 7 and 8 alongwith three others claim that they are in possession of a portion of the suit property, admeasuring 13,601 square metres alongwith a dwelling house, having a built up area of 110 square metres and as such, they are in possession and enjoyment of 13,711 square metres out of the suit property. The defendants however did

not dispute that the suit property is predominantly a coconut garden, containing some fruit bearing trees. According to them, the suit property was divided into nine parts between the year 1952 to 1956 by the predecessors in title of the petitioners and separate portions were leased out to the persons residing in the suit property for agricultural purpose.

9. The learned Trial Court by an order dated 27.09.2016 has dismissed the application filed by the petitioners, which has been confirmed in appeal by the learned District Judge vide judgment dated 21.03.2017 in Miscellaneous Civil Appeal No.147/2016. Hence, this petition.

10. I have heard Shri Bhobe, learned Counsel for the petitioners and Shri Lotlikar, the learned Counsel for the respondents. Perused record.

11. It is submitted by Shri Bhobe, the learned Counsel for the petitioners that the dispute in the present petition only pertains to 19,052 square metres towards the eastern side of the suit property, which only has one house situated therein. It is submitted that the suit property is situated in the settlement zone and the petitioners have obtained all necessary

permissions, development NOC, conversion sanad, from the statutory and local authorities. It is submitted that the names of none of the defendants have been recorded in the other rights column and the application filed before the Mamlatdar is based on false and frivolous claim in order to force stop the work by the petitioners.

12. It is submitted that the Courts below were in error in refusing to grant injunction, particularly, in the wake of the fact that the petitioners have obtained all the necessary permissions and licences. It is submitted that the Trial Court was in error in holding that there are no averments in the pleadings that the land, which is proposed to be developed, excludes the houses of those persons whose names are appearing in the other rights column of Form No. I & XIV of the suit property. It is submitted that the Trial Court has noticed that the survey record shows that there is only one house shown therein, which according to the petitioners is their house. It was in these circumstances, necessary for the Trial Court to have granted injunction.

On behalf of the petitioners, reliance is placed on the decision of this Court in the case of **Laxmi & Others Vs. Savanta Bapu Mali, AIR 1986 BOMBAY 169.**

13. The learned Counsel for the petitioners has pointed out that the Deputy Collector and SDO, by a judgment and order dated 12.04.2012 has declared that the property bearing Survey No. 276/1 and 259/1 of village Morambi-O-Grande, which is purchased by the petitioner no. 1, was not tenanted on or after 02.11.1990 i.e. the date on which Goa Land Use (Regulation) Act 1991 came into force and the property is free from tenancy.

14. Shri Lotlikar, the learned Counsel for the respondents, on the contrary, has supported the impugned order. It is submitted that the tenancy cases are filed by the defendants much prior to the filing of the suit. It is submitted that the survey of the village Morambi-O-Grande was conducted between 1956 to 1970 and it was promulgated somewhere in 1971. It was submitted that at the relevant time, a coconut garden was not covered by the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Tenancy Act, for short). It is only in 1976 that the coconut garden came to be included under the provisions of the Act. It is submitted that absence of the names of the defendants as tenants in Form No. I & XIV is inconsequential and at any rate has been sufficiently explained. On behalf of the petitioners, reliance is placed on the decision

of the Supreme Court in the case of **Inacio Martins Vs. Narayan Hari Naik and Others, AIR 1993 SC 1756**. It is submitted that even according to the petitioners there are certain houses situated in the suit property, which are in possession of different persons and therefore, the Trial Court was right in refusing to grant injunction.

15. I have carefully considered the rival circumstances and the submissions made. I have also gone through the impugned order passed by the learned Trial Court and that of the learned Appellate Court and I do not find that any case for interference is made out.

16. The learned Trial Court has found that the petitioners have not pleaded that the process of developing of the property is to the extent of '15,290' square metres and there is no averment that this property excludes the houses of other persons, whose names are shown in the other rights column of the suit property. The Trial Court has noticed that the survey record shows that there is only one house, which exists in the portion in respect of which, injunction is sought, which according to the petitioners is their house. Admittedly, the tenancy case filed by the defendants, is pending and the

present suit is filed by the petitioners, after the defendants filed the application, claiming tenancy before the Mamlatdar. The learned Trial Court has found and to my mind rightly so, that the Court cannot grant injunction to destroy the subject matter of the suit. In the event, the respondents succeed before the Mamlatdar, it would be difficult to enforce the order, if the entire nature of the property is changed, on account of the development, which is sought to be undertaken by the respondents. Thus, the Trial Court is right in holding that the balance of convenience lies in favour of the petitioners and if, the injunction is granted, it would certainly cause grave prejudice to the respondents. The said finding has been confirmed in appeal and I do not find that the findings so recorded by the Courts below, suffer from infirmity, so as to require interference.

17. On principle, the learned Counsel for the petitioners may be right, on the basis of the judgment of this Court in the case of **Laxmi** (supra), to submit that merely because the suit involves some issues, which are required to be decided under the Tenancy Act, the Civil Court would not be precluded from granting interim relief. However, the existence and the exercise of jurisdiction are two different aspects. The question

whether, a case for grant of injunction is made out or not would depend on facts and circumstances of each case.

18. Reliance placed on the judgment dated 12.04.2012 of the learned Deputy Collector would also be of no avail. *Prima facie*, it appears that there is a unilateral declaration by the Deputy Collector, as the copy of the judgment, which was produced across the bar does not show that there were any respondents, much less, whether, the present respondents were made parties or were heard. Thus, *prima facie* the judgment dated 12.04.2012 passed by the Deputy Collector would not advance the case of the petitioners.

The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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