

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL APPLICATION NO. 169 OF 2016****IN****SECOND APPEAL NO. 88 OF 2016**

Raghoba @ Appa Arjun

Shetgaonkar & Anr.

... Applicants

Versus

Pramod Rane & 8 Ors.

... Respondents

Shri S.D. Lotlikar, Senior Advocate with Ms. Aditi Naik, Advocate for the Applicants.

Shri Valmiki Menezes with Shri Deepak Gaonkar, Advocates for the Respondent Nos. 1 and 2.

Coram : C.V. BHADANG, J.**Date : 5th JULY 2018**

P.C.

Heard Shri Lotlikar, the learned Senior Counsel for the applicants and Shri Menezes, the learned Counsel for the respondent nos. 1 and 2.

2. The first Appellate Court while reversing the judgment and decree of the Trial Court, has passed the following order on 29.06.2016:-

"The instant appeal is partly allowed. The impugned judgment and decree dated 19.10.2013 is quashed and set aside. The counter claim of the defendants is dismissed. The suit is partly

decreed. The defendants are directed to demolish the suit structure and to restore the suit property to the plaintiff in its original form and the defendants, their legal representatives, labourers, assigns, administrators, executors or any person acting through them are permanently restrained from trespassing or interfering in the suit property.”

3. The Second Appeal is already admitted.
4. Shri Lotlikar, the learned Senior Counsel for the appellants submits that the suit filed by the respondents is decreed only on the basis of the revenue record.
5. On the contrary, it is pointed out by Shri Menezes, the learned Counsel for the respondent nos. 1 and 2 that there is a finding recorded by the learned first Appellate Court that the respondents are in possession of the disputed property.
6. Having regard to the overall circumstances, I find that it would be appropriate to partly allow the application. Consequently, the part of the impugned judgment and decree directing demolition of the suit structure and directing the appellants to restore the suit structure to the plaintiffs in the

original form, is hereby stayed. This shall be subject to the condition that the appellants shall not effect any further construction. It is made clear that the rest of the order, is not stayed.

7. The Civil Application is disposed of.

C.V. BHADANG, J.

EV