

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 27 OF 2018

Mr. Menino Santana Fernandes,
68 years of age, r/o H.No.728/D,
Nessai (Sonum Township)
St. Jose de Areal,
Salcete, Goa.

..... Appellant.

V/s

1. Kenthony Fernandes alias
Anthony alias Shanu, major of age,
H.No.728, Sonum Township, Nessai,
St. Jose de Areal, Salcete, Goa.

2. Milton Viegas,
major of age, H.No.734,
Sonum Township,
Nessai, St. Jose de Areal,
Salcete, Goa.

3. Tenny Paul Fernandes,
s/o Mr. Thomas &
Mrs. Maria Severina Fernandes,
H.No.728/C, major of age,
Sonum Township,
Nessai, St. Jose de Areal,
Salcete, Goa.

4. Brent Fernandes,
s/o Joao Augustin Fernandes &
Mrs. Maria Fernandes,
major of age, H.No.722/A,
Sonum Township,

Nessai, St. Jose de Areal,
Salcete, Goa.

5. Purushottam Vishnu Naik,
5.a. Smt. Sarita Purushottam Naik.
(since deceased) through legal heirs
5.a.(i) Atul Purushottam Naik and his wife
(ii) Mrs. Chanda Atul Naik;
all major of age, Residing near
DCI Factory, Margao, Goa.
(iii) Mrs. Rupa D. Valaulikar and
her husband
(iv) Mr. Darshan Valaulikar
Both major of age,
Residing above Bank of Baroda, 1st Floor,
Near Colva Taxi Stand, Margao, Goa.

(v) Mrs. Varsha Sameer Khawte,
and her husband;
(vi) Mr. Sameer Khawte,
both major of age,
Both r/o "Anant Yashoda Smriti",
House No.W-9/20/30,
Behind Almeida High School,
Khadpabandh, Ponda-Goa.

6. Trivikram Vishni Naik and his wife,
6 (a) Smt. Sudha Trivikram Naik,
7. Narayan Pundalik Naik and his wife,
7.a. Smt. Sonia Narayan Naik
All major of age,
resident of C/o Alcon Developers,
Sukerkar Mansion,
1st Floor, M.G. Road, Panaji.
M.G. Road, Panaji Goa.

8. Alcon Developers,

A partnership Firm
having its registered office at
Sukerkar Mansion,
1st Floor, M.G. Road, Panaji, Goa.

9. The Sarpanch/Secretary
The Village Panchayat of Sao Jose de Areal
St. Jose de Areal, Salcete, Goa.

10. State through Chief Secretary,
Government of Goa,
Secretariat, Porvorim Goa.

11. Deputy Director of Panchayats
(south), Directorate of Panchayats
Margao, Salcete, Goa.

12. Additional Director of Panchayat,
Directorate of Panchayats,
Margao, Salcete, Goa.

13. The Block Development Officer,
Mathany Saldanha Building,
Salcete, Margao Goa.

14. The Town Planner,
Town and Country Planning Department,
Margao, Goa.

15. Collector of South Goa,
Collectorate Building,
Margao, Salcete, Goa.

16. The Executive Engineer,
PWD Works Division VI,
Fatorda, Margao, Goa.

.... Respondents.

Mr. Nigel da Costa Frias, Advocate for the Petitioner

Mr.V. Braganza, Advocate for *Respondents No.5, 6(a) and 7(a)*

***Coram : M.S. Sonak &
Nutan D. Sardesai, JJ.***

Reserved on : 15th July, 2019.

Pronounced on : 20th July 2019.

JUDGMENT: (Per M.S. Sonak, J.)

The Appellant, the original Plaintiff in Civil Suit No.57/2011, appeals the Judgment and Decree dated 8th November, 2017 made by the learned District Judge, South Goa, Margao.

2. In the plaint, the Appellant had applied for several reliefs. However, Mr. Nigel da Costa Frias, learned Counsel for the Appellant, whilst opening his submissions, made it clear that the Appellant was basically pressing for the reliefs in terms of prayer clauses (1), (2), (3), (5), (8), (9), (10), (11) and (12) as set out in the prayer clause to the plaint.

3. Most of the Respondents-Defendants filed their written statements opposing grant of reliefs in the plaint. The learned District Judge cast as many as 10 issues based upon the pleadings of the parties. The Appellant-Plaintiff examined himself and three other witnesses in support of the case as pleaded in the plaint. The Defendants No.1 and 2 examined themselves and one Ashok Kadali, Engineer deposed on behalf of Defendant No.8. The learned

District Judge, vide the impugned Judgment and Decree has dismissed the suit. Hence, the present Appeal by the Appellant-Plaintiff.

4. Mr. Nigel da Costa Frias, learned Counsel for the Appellant submits that the learned District Judge has misdirected himself both, on facts and in law. He submits that one of the main issues in the suit was, whether the original owners of the suit property i.e. Defendant Nos. 5 to 8 had indeed transferred the suit open spaces in favour of the Village Panchayat of Sao Jose de Areal (Defendant No.9). He submits that this issue has not been categorically determined by the learned District Judge or, in any case, this issue has been determined without adverting to the affidavit filed by and on behalf of Defendant No.9-Panchayat before this Court, in which, the Panchayat had categorically stated that the transfer is yet to be completed. He submits that in absence of valid transfer of the suit open spaces in favour of the Panchayat, the Panchayat was not at all competent to adopt resolutions dated 21.12.2009, 4.3.2010 and 5.7.2011.

5. In any case, Mr. Costa Frias submits that the resolutions, coupled with other oral and documentary evidence on record, makes it clear that the Panchayat has converted the user of the suit open spaces in breach of the Planning Regulations, as well as the

permission issued by the Panchayat itself for the development of Sonum Township.

6. Mr. Costa Frias submits that the documentary evidence on record establishes that the Defendants were using the suit open spaces for organizing sports events, involving professional football teams. He submits that the resolutions for putting up basketball court or badminton court, clearly amounts to change of user of the open spaces which was impermissible.

7. Mr. Costa Frias submits that based upon the material on record, as well as the law as applicable, the learned District Judge clearly erred in answering the first four issues, as cast, against the Appellant-Plaintiff. He submits that the view taken by the learned District Judge is contrary to the decision of this Court in the case of *Down Mangor Valley Residents vs. Mormugao Municipal Council and ors.*¹.

8. Mr. Costa Frias submits that the Appellant-Plaintiff had pleaded to damages and such pleadings were duly supported by both, oral as well as documentary evidence. He submits that the learned District Judge erred in not appreciating this evidence on record and failing to award damages to the Appellant-Plaintiff.

¹ 2002 (2) Mh. L.J. 290

9. Mr. Costa Frias submits that certain observations in the context of limitation made in the impugned Judgment and Decree are also patently erroneous. He submits that the Appellant-Plaintiff, in the present case, had a continuing cause of action and, therefore, the claim for damages could never have been rejected on the ground of limitation. He submits that the impugned Judgment and Decree is erroneous both, on facts as well as in law and, therefore, warrants interference.

10. Mr. V. Braganza, learned Counsel appearing for Respondents No.5 to 8, has defended the impugned Judgment and Decree on the basis of the reasoning reflected therein. In particular, he points out that in the plaint there were only some vague allegations of collusion against the Defendants whom he represents. He points out that in any case, such vague allegations have not at all been proved. He also pointed out that at the relevant time there was no obligation for executing any gift deed to transfer suit open spaces in favour of the Panchayat and, therefore, such transfer was effected by means of an affidavit. He submits that Defendants No.5 to 8 stand by the transfer and claim no right in respect of the suit open spaces. He submits that it is based on such transfer that final approval was issued by various authorities, including Defendant no.9-Panchayat for sub-division and development of Sonum Township. He submits that even till date, the suit open spaces are

used as open spaces itself and there is no shred of truth in the case pleaded by the Appellant-Plaintiff. For all these reasons, Mr. Braganza submits that this Appeal is liable to be dismissed.

11. The remaining Respondents, though served, chose not to appear either by themselves or through their Advocate/s. Since valid service was effected upon rest of the Respondents, we found no reason to defer the hearing in this Appeal.

12. Based upon the rival contentions, as also the material on record, according to us, the following main points arise for determination in this appeal :

(a) Whether the suit open spaces stand transferred to Defendant No.9-Panchayat so as to cast duty upon the Panchayat to maintain the same as 'open spaces' ?

(b) Whether the suit open spaces are indeed being maintained as 'open spaces' or whether there is any conversion of user of such open spaces ?

(c) Whether the resolutions dated 21.12.2009, 4.3.2010 and 5.7.2011 made by Defendant No.9-Panchayat are illegal, null and void ?

(d) Whether the Appellant has pleaded and proved that any damages are due and payable by the Respondents to him ?

(e) Whether there is any error in the impugned Judgment and Decree in denying the Appellant's claim for damages, inter alia, on the ground of limitation ?

13. In the present case, there is no doubt that Defendants No. 5 to 8 were owners/developers in respect of the properties surveyed under Nos. 17/2 to 8, 12 to 19 and 23 and survey Nos. 58/1 and 2 and 59/3 of village St. Jose de Areal. In fact, the record indicates that Defendants No.5 to 7 by an agreement dated 17.3.1986 appointed Defendant No.8 as a developer to undertake the development and sub-division of these properties and invested Defendant No.8 with certain powers, even to effect sales of the developed plots.

14. Defendant No.8, in pursuance of the powers conferred upon him by the owners, applied for and secured permissions from the statutory authorities like Planning and Development Authorities, and the Village Panchayat of St. Jose de Areal on the basis of such permissions. It is the Defendant No.8 who, together with the owners, has developed the properties in question under the name and style 'Sonam Township'. There is no dispute that in terms of the

permissions/approvals, the open spaces and set backs have been maintained, so far as layout of Sonam Township is concerned.

15. The Appellant-Plaintiff, vide registered sale deeds dated 1.8.1990 and 8.9.1992, purchased the sub-divided plots bearing Nos. A-29 and A-30 in Sonam Township. The sub-division plan at Exhibit 207-colly indicates that Plots No.A-29 and A-30 abut a 10 metres wide road and immediately, on the opposite side of the road, are two open spaces admeasuring 7900 sq. metres and 4100 sq. metres respectively. The dispute raised in the plaint and consequently in the present appeal, concerns these two open spaces, which have been referred to as the 'suit open spaces'.

16. In the plaint, it is the case of the Appellant-Plaintiff that after the Appellant-Plaintiff constructed a bungalow in the plots purchased by him sometime in the year 2001, Defendant No.9-Panchayat erected goal posts in the open spaces and Defendants No.1 to 4, in connivance with Defendants No.5 to 9 have been playing/organising football, cricket and other tournaments in the said open spaces. It is the case of the Appellant-Plaintiff that the suit open spaces have not been transferred in favour of Defendant No.9-Panchayat by Defendants No.5 to 8 and despite there being no transfer, Defendant No.9-Panchayat has passed resolutions dated 21.12.2009, 4.3.2010 and 5.7.2011 purporting to regularise the

erection of the goal posts, convert user by construction of badminton and volley ball courts and permit fencing of the open spaces with wire-mesh. It is the case of the Appellant-Plaintiff that on account of the defendant Nos. 1 to 4, who, in collusion with Defendant Nos. 5 to 8, have playing/organizing football, cricket and other tournaments there is much nuisance caused. It is the case of the Appellant-Plaintiff that on account of the football or cricket ball constantly hitting the Appellant-Plaintiff's bungalow, there is destruction of windowpanes or otherwise there is damage to the bungalow. The Appellant-Plaintiff, on this basis, has claimed damages of almost ₹12.00 crores or thereabouts. The Appellant-Plaintiff has also claimed a declaration that the resolutions passed by Defendant No.9-Panchayat are illegal, null and void. The Appellant-Plaintiff has also made a grievance with regard to the wire-mesh fencing, goal posts and the proposal to construct badminton and basket-ball courts on the suit open spaces by Defendant No.9-Panchayat.

12. In so far as first point for determination is concerned, from the pleadings and from the evidence led by and on behalf of the Appellant-Plaintiff, it cannot be said that the Appellant-Plaintiff is himself quite clear in his assertion that there is no transfer of the suit open spaces by Defendants No. 5 to 8 in favour of Defendant No.9-Panchayat. In any case, the assertion of the Appellant-Plaintiff is not quite relevant because Defendants No.5 to 8, in terms, have stated

that they have indeed transferred the suit open spaces in favour of Defendant No.9-Panchayat by means of a declaration spelt out in an affidavit. Similarly, Defendant No.9-Panchayat has asserted that the suit open spaces have indeed been transferred to Defendant No.9-Panchayat.

18. It is true, as contended by Mr. Costa Frias, that Defendant No.9-Panchayat, in a writ petition filed by the the Plaintiff, complaining against erection of the wire-mesh fencing had taken a stand that the transfer process was yet to be completed. However, at least in the suit, Defendant No.9-Panchayat is quite clear that the suit open spaces stand transferred in its favour. Now that Defendants No.5 to 8, who are owners and developers of the property 'Sonum Township', assert that there is a transfer of the suit open spaces in favour of Defendant No.9-Panchayat and Defendant No.9-Panchayat also asserts that there is a transfer of the suit open spaces in its favour, it is futile for the Appellant-Plaintiff to keep on insisting that there is no such transfer, merely because Defendants No.5 to 8 have not executed a formal gift deed in respect of the suit open spaces in favour of Defendant No.9-Panchayat.

19. The assertion made on behalf of Defendants No.5 to 8, as well as Defendant No.9, will clearly estopp them from contending to the contrary at any stage in future. This is more so, since it is on the

basis of such transfer of the suit open spaces in favour of Defendant No.9-Panchayat that Defendants No.5 to 8 have secured final approvals for sub-division /development of the properties into 'Sonum Township'. Mr. Braganza for Respondents No.5 to 8 in fact contended that there is a transfer of the suit open spaces and it is on the basis of such a transfer that the final NOC for sub-division of the property came to be issued. Based upon this material, there is really no good ground to entertain the apprehension expressed by and on behalf of the Appellant-Plaintiff on the issue of transfer of the suit open spaces in favour of Defendant No.9-Panchayat.

20. In the aforesaid regard, the learned District Judge has quite correctly referred to Regulation 5.4(2) of the Planning and Development Authority (Development Plan) Regulations, 2000 which, inter alia, provided that the open spaces shall be deemed to be zoned as zone 'R' and shall be jointly held, developed and maintained by the owners of the sub-divided plots, unless they are transferred to the local authority. What is relevant is that the 2000 Regulations did not specify the manner in which the transfer was to be made. In contrast, Regulation 12.4(e)(1) of the Goa Land Development and Building Construction Regulations, 2010 specifically lay down that the open spaces may be transferred by way of gift deed by the owner/developer before obtaining final approvals. In the present case, there is an affidavit on record in which there is an assertion on

behalf of Defendants No.2 to 8 that the suit open spaces have indeed been transferred in favour of Defendant No.9-Panchayat which, admittedly, is the legal authority concerned. In the absence of any specific requirement in the Regulations of 2000 which were the regulations in force at the relevant time, there is really no reason to hold that the suit open spaces do not stand transferred to Defendant No.9-Panchayat. Accordingly, the first point for determination will have to be answered against the Appellant-Plaintiff and in favour of the Defendants.

21. The next point for determination is really a most crucial point in this matter. The issue as to whether the suit open spaces have been transferred to Defendant No.9-Panchayat or not, is quite secondary as compared to the issue as to whether the suit open spaces are indeed being maintained as 'open spaces' or whether the suit open spaces are being converted for the use other than the use permissible in the open spaces.

22. There is an overwhelming material on record to establish that the suit open spaces are being used as 'open spaces' for recreational and community purposes of the occupants of the subdivided plots as is contemplated by the Regulations. Mere setting up of some goal posts or even the proposal to have badminton or basket ball courts in the suit open spaces, does not amount to any significant

conversion of user. Even placing goal posts, badminton or basket-ball courts, apart from holding football or cricket matches would amount to recreational activities. Installation of the two goal posts or for that matter, wire-mesh fencing would, by no means, be sufficient to hold that the suit open spaces are being used for the purposes other than those for which the open spaces are permitted to be used.

23. In fact, the record indicates that when the wire-mesh fencing was installed, the Petitioner instituted Writ Petition No.768/2013 before this Court. The writ petition was, in fact withdrawn by the Petitioner based upon a statement that the wire-mesh fencing was put up so as to prevent the footballs or cricket balls from hitting the windowpanes of the Appellant-Plaintiff's bungalow. No doubt, whilst withdrawing the writ petition, the Appellant-Plaintiff retained the right to pursue other remedies. However, that was more in the context of claiming damages and not really in the context of pursuing the challenge to setting up of the wire-mesh fencing. In any case, mere setting up of wire-mesh fencing does not amount to conversion of user. Wire-mesh fencing is basically to regulate the user of the suit open spaces for recreational purposes. Accordingly, on the basis of the evidence on record, it cannot be said that the suit open spaces are no longer being maintained as open spaces or that there is any conversion of user of the open spaces as alleged by the Appellant-Plaintiff.

24. If the evidence of the Appellant-Plaintiff is further analysed, the Appellant-Plaintiff has himself admitted that Defendants No.1 to 4 also have a right to use the suit open spaces for recreational purposes. The Appellant-Plaintiff has also admitted that he has an access to the suit open spaces notwithstanding the wire-mesh fencing. But the Appellant-Plaintiff clarified that when there are sports activities in the suit open spaces, his access is interrupted to some extent.

25. In the course of his cross examination, the Appellant-Plaintiff has himself stated that he was very conversant with the area which ultimately came to be developed as 'Sonum Township', since he used to reside in the said area since his childhood, along with his mother and two sisters. He has then deposed that he saw the open spaces being used as a play ground somewhere late 2011 and early 2002, when two goal posts were erected. He admitted that open space was kept for recreational purposes, but stated that it was meant only for the residents of Sonum Township. He then stated that he saw Defendant No.1 playing football in the said open space somewhere in August-October 2014.

26. It is pertinent to note that the suit itself was instituted in the year 2011. The Appellant-Plaintiff has then deposed that he saw Defendant No.2 Milton playing on the said ground on 24/08/2011,

but added that Defendant No.2 was not playing football, but only hitting the football on the Appellant-Plaintiff's bungalow. He also added that there were 7 to 8 small boys with him at that time. He admitted that he did not lodge any complaint regards the incident of the said date. The Appellant-Plaintiff has then deposed that he saw Defendant No.3 playing football on the said open space on 26/05/2013, along with some other boys. He also vaguely deposed that he saw Defendant No.4 Brent playing in the said open space somewhere in the year 2011. In the later portion of the cross examination, the Appellant-Plaintiff has stated that there can be no objection to Defendants No.1 to 4 using the said open space, but the Appellant-Plaintiff objects to the general public using the suit open spaces as play ground. All these statements militate against the claim of the Appellant-Plaintiff that there is any conversion of user or that the open spaces are being used for the purposes other than open spaces. The second point for determination will have to be determined accordingly.

27. In so far as the resolutions dated 21.12.2009, 4.3.2010 and 5.7.2011 passed by Defendant No.9-Panchayat are concerned, it is significant to note that there was a challenge to these resolutions before the Additional Director of Panchayats -Defendant No.12. This challenge of Appellant-Plaintiff has, in fact, failed. The learned District Judge has correctly held that it was thereafter not open to the

Appellant-Plaintiff to pursue such challenges in the civil suit. In any case, the main limb of the challenge was that there is no valid transfer of the suit open spaces in favour of Defendant No.9-Panchayat and in the absence of such valid transfer, Defendant No.9-Panchayat had no authority to make such resolutions. As we have already held that there was transfer of suit open spaces in favour of Defendant No.9-Panchayat, even this contention fails and is not required to be accepted.

28. The Appellant-Plaintiff, in the course of deposition, has admitted that his challenge to the resolutions of the Panchayat before the Director of Panchayats failed. He has merely stated that the resolutions were in violation of the order of the Deputy Director of Panchayats. The Appellant-Plaintiff has categorically admitted that except for fixing the wire-mesh and the masonry wall on which the wire-mesh is fixed, which blocks his direct access to the open space, the open space is otherwise accessible to him. He has, in fact, categorically admitted that the open spaces are usable by him at all times. He then voluntarily added that whenever the open spaces are used as play ground, he is unable to use the same. He has also admitted that he is not entitled to exclusive use of the open spaces. In the course of his evidence, the Appellant-Plaintiff has also tried to contend that the Defendants were not entitled to transfer the ownership rights to the open spaces in favour of the Village

Panchayat, without the consent of all owners of the sub-divided plots. When questioned as to the basis of this statement, he has merely replied “... *because I feel so*.”. The third point for determination is answered against the Appellant-Plaintiff.

29. On the aspect of damages, the pleadings are too sketchy and bereft of any details. That apart, there is absolutely no evidence at all to sustain the claim of the damages in the amount of ₹12.00 crores or thereabouts. The Appellant-Plaintiff has certainly not been consistent with his claim. At one position he has stated that he returned from Gulf on account of recession in the Gulf, on the other hand, he seeks to make out a case that he had to return India because the activities in the suit open spaces were prejudicial his bungalow and he had to return to take care of his bungalow. Apart from his deposition that on some occasions some windowpanes of his bungalow were broken, there is really no evidence on the aspect of damages to the bungalow to sustain claim of damages to the extent of ₹ 12.00 crores amount. Besides, there is no evidence to say that Defendants No.1 to 4 broke the windowpanes. The Appellant-Plaintiff is even not consistent with his case. On one hand, he has alleged that some stones were pelted on his bungalow, on the other hand, he contends that it is the sports activity in the suit open spaces which has caused damage to his bungalow. In any case, since the Appellant-Plaintiff has failed to establish that there is any conversion

of user and, therefore, the recreational activities in the suit open spaces hardly afford any serious cause of action to the Appellant-Plaintiff to claim damages under various heads, and that too, in an exaggerated amount of ₹ 12.00 crores

30. The Appellant-Plaintiff was specifically questioned as to the basis on which the claim for damages from the year 2002 when, according to him, he came to know of Defendants No.1 to 4 and their user of the said open spaces only in the year 2009. To this, the Appellant-Plaintiff replied that he did not know which persons were playing in the suit open spaces and causing damage to his villa in the year 2002, but that he had only seen the goal posts in the year 2002. He then added that since he had seen Defendants No.1 to 4 in the year 2009, he thought that perhaps it is they who had caused damage. The Appellant-Plaintiff has, in his evidence, alleged that the professional clubs like Salgaocars, Salcete Club, Curtorim Gymkhana, etc. were using the suit open space as a play ground. Significantly, none of these clubs have been impleaded as Defendant/s in the suit. No any injunction has been sought against these clubs. No damages have been applied from these clubs. Only allegation in the plaint is that such activity was organised by Defendants No.1 to 9. There is absolutely no evidence in support of this allegation.

31. The other allegation is of collusion between the

Defendants in the matter of organising such activities on the said open spaces. Again, except the bare allegation, there is no evidence worth the name in support thereof. The Appellant-Plaintiff has also admitted that there is a road between the compound wall and the open space, which is used as a play ground. He has admitted that the wire-mesh fencing is erected at a distance of about 6 to 7 metres from the edge of the road, towards the open space. He has admitted that he had filed a private criminal case against Defendant No.2 in which Defendant No.2 was acquitted. He has admitted that Sonam Township is not a gated complex. He has admitted that he had filed a writ petition, seeking removal of the wire-mesh fencing. He has also admitted that he withdrew the petition when a statement was made before the High Court that the said fencing was to prevent the balls from damaging glass windowpanes of the houses. Based upon such evidence, we are not prepared to hold that the Appellant-Plaintiff has made out any case to sustain the claim for damages. The Appellant-Plaintiff contrary to his pleadings admitted that he had not seen anyone lighting fire crackers on the playground. He then alleged that the dust from the open spaces comes to his house through the wire-mesh and stated that this constitutes nuisance. On the basis of such evidence, we are unable to find any fault with the view taken by the learned District Judge in dismissing the suit, seeking *inter alia* injunction, as well as damages.

32. There is no evidence on record worth the name to establish that Defendants No.1 to 9, in collusion with one another, were organising sports/tournaments by involving professional teams. In fact, the record indicates that letters were issued by Defendant No.9-Panchayat stopping certain professional teams from using the suit open spaces. The allegations of collusion have been made in the plaint, but they are not at all substantiated in the course of evidence. In fact, there is absolutely no evidence to establish the allegations of collusion, particularly as against Defendants No. 5 to 8 or for that matter, Defendant No.9, which is incidentally the Village Panchayat. Based upon such vague allegations, not supported by any cogent proof, the learned District Judge was quite right in rejecting the claims made by and on behalf of the Appellant-Plaintiff.

33. For all the aforesaid reasons, even the fourth point for determination is required to be determined against the Appellant-Plaintiff.

34. On the aspect of limitation, all that the learned District Judge has said is that since the Appellant-Plaintiff has himself pleaded that he suffered damages on account of the nuisance caused in the year 2002, the claim for damages made in the year 2011 was time barred. The issue as to whether the cause of action for the Appellant-Plaintiff is continuing one or not, is really irrelevant because, even on

merits, the Appellant-Plaintiff has failed to establish any entitlement for damages.

35. The decision of the Division Bench of this Court in the case of ***Down Mangor Valley Residents*** (supra) merely states that the open spaces have to be maintained and no unauthorised constructions can be permitted upon such open spaces. In the present case, the suit open spaces have been maintained as open spaces and there is absolutely no material on record to suggest that any illegal construction or structures have been put up on the suit open spaces. Therefore, the Appellant-Plaintiff cannot claim any relief on the basis of the decision in the case of ***Down Mangor Valley Residents*** (supra).

36. For all the aforesaid reasons, we dismiss the appeal. However, we leave the parties to bear their own costs.

Nutan D. Sardesai, J.

M.S. Sonak, J.