

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 949 OF 2018**

1. Shri Simon Godinho,
aged 36 years,
son of Shri Agostinho Godinho,
service, R/O of H. No.2041,
Dabolim, Shiroda,
Ponda-Goa. and anr.

..... Petitioners

V e r s u s

1. Mrs. Vincy Mascarenha,
aged 45 years,
w/o late of Mr. Thomas Mascarenha,
housewife, R/o of H. No. 2042,
Dabolim, Shiroda,
Ponda-Goa and 3 others.

..... Respondents.

Adv. Shirin V. Naik for the Petitioners.

Adv. Shailesh Redkar U/las for Respondent Nos. 1 To 3

Coram:- C. V. BHADANG, J.

Date:- 6th February 2019.

Oral Order:

By this petition, the petitioners, who are the original plaintiffs are challenging the judgment and order dated 30/8/2018 passed by the learned District Judge-2, Panaji in Miscellaneous Civil Appeal no.48 of 2018. By the impugned judgment, the learned District Judge, while allowing the appeal filed by the respondent/defendants, has set aside the order dated 4/5/2018 passed by the learned trial court, granting temporary injunction in favour of

the petitioners. The learned trial court had granted injunction against the respondents or any body on their behalf from carrying out any further construction in the suit property or from interfering with the suit property in any manner whatsoever to the detriment of the interest of the petitioners.

2. Land survey no. 923/1 of Shiroda village, better known as “Deula Morod” totally admeasures 9400 sq.mtrs and one Shri Venktesh alias Pradip Naik is shown to be the occupant/bhatkar of the said land. The Form No.I and XIV shows the name of eight persons which includes the name of now deceased Lourenco Godinho, who is the grandfather of the petitioner no.1. According to the petitioners, they are in possession of 2400 sq.mts of land from out of total 9400 sq.mts as tenants, having inherited the tenancy rights from their grandfather, Lourenco Godinho.

3. The case made out by the respondents on the contrary is that they are the tenants from the time of their uncle, Jose Antonio Mascarenhas, who is also shown as one of the tenants in the Form No.I and XIV.

4. Thus prima facie the dispute is between the two tenants. Admittedly, the bhatkar is not made a party to the suit. Although the petitioners claim that they are in possession of 2400 sq.mtrs of land from out of the total 9400

sq.mts., there is no acceptable evidence at this stage to carve out or identify the said portion which the petitioners claims to be in possession of as tenants. On behalf of the petitioners reliance is placed on the report of the surveyor, Mr. J. S. Oulkar dated 15/12/2017, which annexes a plan in which the suit property is shown by shaded portion. However, prima facie it can be seen that the only documents referred by the surveyor, are the Form No.I and XIV and the survey plan of land no.923/1 which prima facie do not indicate any such demarcation or separation of 2400 sq.mtrs of land. It is significant to note that the Form No.I and XIV shows the names of eight persons as tenants and it does not set out the respective area which these tenants were enjoying in their possession as tenants. The learned counsel for the petitioners has submitted that there is a presumption attaching to the entries made in the survey record under section 105 of the Land Revenue Code. Reliance in this regard is placed on the decision of the this Court in the case of **Damodara Ranum Porobo Loundo Vs. Shri Bhasker R. Jalmi and others 1990 (2) Goa L.T. 407** , in order to submit that presumption arising under section 105 of the Code, cannot be rebutted on the basis of an Affidavit filed. It is submitted that unless and until the entry is modified or substituted, the presumption subsists. Although the principle as laid down cannot be disputed, the same cannot come to the aid of the petitioners in the absence of specific portion admeasuring 2400 sq.mtrs of land being shown separately or

being demarcated. Prima facie at this stage it can also be seen that the plaint is conspicuously silent about the manner in which the land was cultivated, the rent fixed. There are no rent receipts produced on record. The petitioners in my considered view have to first show a prima facie case of his tenancy rights as to the specific portion of the land out of survey no.923/1. In the absence of the same, I do not find that any case for interference is made out. The petition is without any merit and is dismissed with no order as to costs.

5. It is made clear that this, however, shall not prevent the Village Panchayat from taking action against the construction if at all it is found to be illegal.

C. V. BHADANG, J.

ap/-