VPH

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER No. 9 OF 2019

1. Mr. Amit N. Pai, 37 years of age,)
son of N. Pai, R/o. H. No. 63, near Ribandar)
Hospital, Opp. Diwar Ferry, Ribandar,)
Tiswadi – Goa)

2. Mrs. Richa Pai, 30 years of age,)
R/o. H. No. 63, near Ribandar Hospital,)
Opp. Diwar Ferry, Ribandar, Tiswadi-Goa … **Appellants**

Vs.

1. Mr. Shekhar Poy Raiturkar, Major of age,)
R/o. Virginkar Heritage, Davorlim, Navelim)
Salcete – Goa)

2. Gopika S. Poy Raiturkar, Major of age,)
wife of Shekhar Poy Raiturkar,)
R/o. Virginkar Heritage, Davorlim,)
Navelim, Salcete – Goa)

3. Sanjay A. Poy Raiturkar, Major of age,)
C/o. Fabrica de Gas Carbonico Pvt. Ltd.)
Nuvem, Salcete – Goa)

4. Binita S. Poy Raiturkar, Major of age,)
wife of Sanjay A. Poy Raiturkar, R/o.)
C/o. Fabrica de Gas Carbonico Pvt. Ltd.)
Nuvem, Salcete – Goa)

5. Pratima Motilal Keni, Major of age,)
wife of Motilal Keni, R/o. H. No. B-7,)
Sapana Batista, St. Joaquim Road,)
Borda, Margao – Goa)

6. Motilal S. Keni, Major of age,)
R/o. H. No. 7, Sapana Batista, St. Joaquim)
Road, Borda, Margao – Goa)

7. Anup G. Poy Raiturkar, Major of age,)
R/o. H. No. 992, St. Joaquim Road,)
Borda Margao – Goa)

8. Sapna Poy Raiturkar, Major of age,)
R/o. H. No. 992, St. Joaquim Road,)
Borda Margao – Goa)

8. Sapna Poy Raiturk)
R/o. H. No. 992, St. Joaquim Road,)
Borda Margao – Goa)

9. Ajay G. Poy Raiturkar, Major of age,)
R/o. H. No. 992, St. Joaquim Road,)
Borda Margao – Goa)

10. Avanti A. Poy Raiturkar, Major of age,)
R/o. H. No. 992, St. Joaquim Road,)
Borda Margao – Goa)

11. Smt. Yogita Gautam Pai Kakode,)
Major of age, wife of Gautam Pai Kakode)
R/o. H. No. 108 1h, St. Joaquim Road,)
Borda Margao – Goa)

12. Gautam Pai Kakode, Major of age,)
son of V. Pai Kakode,)
R/o. H. No. 108 1h, St. Joaquim Road,)
Borda Margao – Goa … **Respondents**

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Mr. A. D. Bhobe with Ms. A. Fernandes, for the Appellants.

Mr. C. A. Coutinho with Ivan Santimano, for Respondents.

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CORAM : C. V. BHADANG, J.

RESERVED FOR JUDGMENT ON : AUGUST 22, 2019.
JUDGMENT PRONOUNCED ON : JUNE 5, 2020
(PRONOUNCED VIA VIDEO CONFERENCING)

JUDGMENT :

1. By this appeal the appellants are challenging the order dated 22.1.2019 passed by the learned Senior Civil Judge Panaji, in Special Civil Suit No. 30/2018/A. By the impugned order the learned trial court has allowed application for temporary prohibitory and mandatory injunction filed by the respondent Nos. 1 and 2 (plaintiffs).

2. **<u>Factual background</u> :**

. The aforesaid suit is filed by the respondent Nos. 1 and 2 against the appellants (defendant Nos. 1 and 2) and the respondent Nos. 3 to 12. The subject matter of dispute is property surveyed under chalta No. 7 and 8 of PT sheet No. 116 of City Survey of Panaji, with a house situated thereon, bearing house No. 13/866. The case made out in the plaint is that the suit property was purchased by Atchuta Raiturkar, father / father-in-law of the plaintiffs, under sale-deed dated 1.2.1962. Although the property was purchased by Atchuta Raiturkar, it was transferred in the name of Atchuta and his two brothers, which transfer was confirmed by a decree dated 10.10.1985 passed by the civil court at Panaji.

3. Upon purchase of the property, one Mr Thali was permitted to use the house situated in the suit property for his residence and to conduct his profession as a chartered accountant. On account of this, the name of Mr. Thali was shown in Form D as an occupant / holder.

One Mr S. S. Dalvi was working with him as an office colleague. The electricity and the house tax stood in the name of Atchuta, while the electricity charges were borne by Mr. Dalvi, and the house tax was paid by Atchuta.

4. In the year 1967 Mr. Thali shifted his office to Govinda Building. However, he continued to reside in the said house till 1973. From 1973 to 1982 the suit property was occupied by Mr. Raikar, General Manager of D. B. Bandodkar and Sons. From 1982 to 1985 the house was mostly closed. However, Mr. Atchuta and his family would reside in the house, sometimes for a day or two, whenever they need to stay in Panaji.

5. In the year 1967 Atchuta started M/s. Govind Poi Raiturkar Engineering Pvt. Ltd. and opened a sanitary and tiles showroom in the said house. The said business was conducted till the year 2005. Atchuta had no other premises at Miramar, either on ownership or lease hold basis.

6. In the year 1991, the names of Atchuta and his three brothers were confirmed in Form B on the basis of the decree of the year 1985. The business of sanitary ware, was conducted till the year 2005, in which year the suit property was allotted to the plaintiffs in a family settlement, which was confirmed by an arbitration award dated

27.1.2008, in which the estate of the three brothers was subject matter of the arbitral proceedings. In the year 2005 the plaintiffs took exclusive possession of the suit property and the business of the sanitary ware was shifted to Govind Poy Raiturkar building at Margao, where originally the business was conducted by the said company. The said company was allotted to the family of Govind Gopal Pai Raiturkar. In terms of the arbitral award, certain deeds were to be executed to formalise the family settlement. On account of non execution of the said deeds Govind and Madhav Gopal Pai Raiturkar and other family members are made party defendant Nos. 3 to 12.

7. Be that as it may, it is the material case that from 2005 till date the plaintiffs are in exclusive possession of the suit property. The house tax is paid till 2016-17. The electricity bill has been paid till 2.10.2017, which was paid in advance. The plaintiffs have carried out regular pre-monsoon works and the compound wall, which had fallen in disrepairs, has been repaired in the year 2010. The house was painted externally in the year 2009.

8. On 2.4.2018 the plaintiff No. 1 went to the suit house for making arrangement for the pre-monsoon works, when he noticed that the locks were changed by unknown persons and security personnel (bouncers) were deployed there. The matter was reported to the police.

It appears that on the same day the defendant No. 1 also lodged a complaint with the police that the security personnel deployed on the suit property were threatened by the plaintiffs and the plaintiffs also threatened to break open the locks.

9. On 3.4.2018 at about 2.30 pm the respondent nos 1 and 2 (plaintiffs) cut open the locks on the gate and the house. It is the specific case made out that in the same evening, the appellants have broken open the lock of the rear door and have deployed private security guards in the said property, which is a clear act of trespass. In short, according to the plaintiffs, the appellants were never in possession and have never resided in the suit house. There are no required amenities in the suit house. It was contended that it is the *modus operandi* of the appellant No. 1 who is involved in the activity of forging documents and taking forcible possession of properties of various persons, the details of which have been set out in para 31 of the plaint.

10. It is in these circumstances that the suit came to be filed for the following reliefs:

> "(a) The plaintiff be declared to be owners in possession of the house bearing No. C-13/866 located in chalta No. 7 and 8 of P.T. sheet No. 116 of Panjim city.
>
> (b) By way of permanent injunction the defendant Nos. 1 and 2, their agents, servants, representatives or anybody acting on

their behalf be restrained from in any way interfering with the house located in the suit property and the suit property.

(c) Order that the defendants 1 and 2 pay the plaintiffs a sum of Rs. 7,500/- per day of trespass.”

11. The plaintiffs filed an application for temporary injunction against the appellants directing them to remove the security personnel stationed outside the suit house and not to interfere or deal with the suit property in any manner. Following are the reliefs claimed in the application:

“(a) By way of temporary mandatory injunction the defendant Nos 1 and 2 be ordered to remove the security personnel stationed outside the suit house.

(b) defendant Nos 1 and 2 be restrained from in any way creating any third party rights by entering into any third party transaction in respect of the suit property and the suit house.

(c) the defendants, their agents, servants, representatives or anybody acting on their behalf be restrained from in any way interfering with the suit property and/or dealing with the property in any manner whatsoever.

(d) for ad interim reliefs in terms of prayer clauses (a), (b), and (c).”

12. The appellants filed an interim reply dated 4.8.2018 and a detailed reply on 27.8.2018 and opposed the same. It appears that during the pendency of the application for temporary injunction the appellants also filed their written statement and raised a counter claim

seeking permanent injunction restraining the plaintiffs or anybody on their behalf from interfering with the suit property or with possession of the appellants over the suit property. The appellants are relying on an unregistered deed of transfer dated 17.3.1980 and an undated letter of possession to the Mayor of the City of Panjim and five receipts of payment of the electricity bills and the house tax receipts and certain other documents to claim that they are in possession of the suit property. It is contended that the appellants are the owners, in possession of the suit property by virtue of the deed of Transfer and sale dated 17.3.1980, executed by the owners namely Atchuta, and his wife Indumati alias Shubhada in favour of the late parents / parents-in-law of the appellants. It was specifically contended that the possession of the suit property is also handed over, and the filing of the suit and the application for interim relief is an attempt to grab the property. It was denied that the plaintiffs were in possession of the suit property, as claimed or that the deed of transfer of the year 1980 and for the matter of that the letter to the mayor and other documents on which the appellants are placing reliance, are forged or fabricated, as alleged by the plaintiffs. All other adverse allegations including the conduct of the business of sanitary ware in the suit property, in order to show the alleged possession of the plaintiffs over the suit property, have been denied. The allegation about any *modus operandi* to grab various properties is denied. The appellants have placed reliance on the police complaints lodged against the plaintiffs. It was also contended that the suit is bad for non-joinder of necessary parties.

13. The learned trial court by the impugned order dated 22.1.2019 has partly allowed the application in the following terms:

> "Application for injunction filed by the plaintiff is partly allowed with costs.
>
> By way of temporary injunction, the defendants 1 and 2 are ordered to remove the security personnel stationed outside the suit house within a period of seven days from today.
>
> The defendants 1 and 2 are restrained from creating any third party rights in respect of the suit property or the suit house.
>
> The defendants no. 1 and 2, their agents, servants or anybody acting on their behalf are restrained from interfering with the suit property and the suit house. Until this order of injunction is in force as against the defendants, the plaintiffs shall not make any structural changes to the suit house of permanent nature."

Hence this appeal.

14. I have heard Mr. Bhobe the learned counsel for the appellants and Mr. Coutinho the learned counsel for the respondent Nos. 1 and 2. The parties have also filed written notes of arguments on record. I have gone through the same.

15. Mr. Bhobe, the learned counsel for the appellants has

made the following submissions:

(i) That the plaintiffs have not sought recovery of possession or eviction of the appellants from the suit property. Thus the trial court has by granting mandatory injunction at the interim stage, in effect granted an order of eviction, which relief is never sought for.

(ii) Once the trial court has found that the appellants were in *de facto* possession of the suit property, it could not have granted mandatory injunction at the interim stage, which has resulted into practically decreeing the suit without trial. The plaintiffs have neither challenged nor shown that the finding as to *de facto* possession is wrong. Grant of a relief in the nature of a final relief is not permissible at this stage. For this purpose reliance is placed on the decision of the Supreme Court in (i) ***Deoraj Vs. State of Maharashtra & Ors.***[1]***; (ii) Purshottam Raheja Vs. Shrichand Raheja & Ors.***[2]***; (iii) Dorab Cawasji Warden Vs. Coom Sorab Warden & Ors.***[3]***;*** (iv) ***Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd.***[4] and the decision of this court in (v) ***Morto Agashikar Vs. Shamsunder***

[1] (2004) 4 SCC 697
[2] (2011) 6 SCC 73
[3] (1990) 2 SCC 117
[4] (1999) 7 SCC 1

Naik*[5]*.

(iii) The learned counsel has pointed out letters dated 17.3.1980 and 18.3.1980 from Atchuta, leave and license agreement dated 31.1.1992, the documents as to registration of a vehicle purchased by the father of the appellant showing the address of the suit house (which is a document, which is sought to be produced in appeal under Order XLI Rule 27 of CPC) and the evidence about the contract dated 1.4.2017 and payments made to the security agency in order to submit that the appellants have been in settled possession of the suit property by virtue of the deed of transfer of the year 1980.

(iv) It is submitted that the respondents have made a futile attempt to show their possession on the strength of certain documents. However, the plaint is conspicuously silent on the possession between 2009-10 to 2018. At any rate, the appellants have *prima facie* shown that they are in possession of the suit property from 1980 and in any case prior to April 2018 that is much prior to the filing of the suit in June 2018. It is submitted that the trial court has not recorded any finding as to when the appellants have obtained the possession. It is submitted that the learned trial court in para 46 has asked itself wrong question as

[5] 1989 (1) GLT 327

if it is deciding the suit on merits. It is submitted that the finding recorded by the learned trial court in para 38 of the impunged order is perverse.

(v) It is submitted that the plaintiffs have claimed damages which are quantified in the suit and as such it cannot be said that the plaintiffs would suffer irreparable loss, namely one which cannot be compensated in terms of money, if the injunction is not granted. Reliance in this regard is placed on the decision of the Supreme Court in ***Dalpat Kumar & Anr. Vs Pralhad Singh & Ors.***[6] .

(vi) It is submitted that the findings recorded by the learned trial court are perverse and against the weight of the evidence on record.

(vii) It is submitted that, after the passing of the impugned order, the plaintiffs have filed an application for amendment of the plaint seeking to incorporate para 37(aa) claiming possession which would indicate that the plaintiffs are not in possession of the suit property. It is submitted that had the said prayer been there since inception, no injunction could have been granted. It is submitted that the said application is intentionally filed after grant of the injunction. It is submitted that the plaintiffs have not approached

[6] (1992) 1 SCC 791

the court with clean hands and are not entitled to the equitable relief.

16. Mr. Coutinho, the learned counsel for the respondent Nos. 1 and 2 has supported the impugned order, although he has challenged the finding that the appellants are in *defacto* possession of the suit property. It is submitted that these respondents cannot be said to have lost *defacto* possession by a mere act of trespass by the appellants. It is submitted that the trial court has rightly granted mandatory injunction directing removal of the security personnel, even assuming that the appellants are in *defacto* possession having no legal right to be in possession and on finding that these respondents are in dejure possession of the suit property. It is submitted that the plaintiffs have been in settled possession of the suit property as owners thereof as against the claim of the appellants on the basis of an alleged deed of transfer and sale of the year 1980, which is an unregistered document, which cannot confer any legal right. It is submitted that the appellants were never in possession of the suit property and they forcibly trespassed in the property by breaking open the lock on the rear door on 3.4.2018. It is submitted that the document of the year 1980 is said to be executed before a notary Vasco de Silva Ferreira. It is submitted that the document shows the notary's rubber stamp as “State of Goa”

when Goa became a state only on 30.5.1987. It is submitted that the purported signature of Atchuta on the said deed, the letter of possession and the receipt are forged. It is submitted that *prima facie* the documents on which the plaintiffs have placed reliance are more reliable being a decree of the civil court, an award of the arbitrator and the electricity bills etc.

17. It is submitted that the trial court on the basis of a strong *prima facie* case has rightly granted the injunction. It is submitted that the possession of a trespasser who has entered shortly before the filing of the suit cannot be one which is acquiesced by the true owner. It is submitted that mere stray or intermittent acts of trespass do not give rise to any right to remain in possession as held by the Supreme Court in ***Poona Ram Vs Moti Ram and ors AIR 2019 SC 813.*** It is submitted that the findings are based on proper consideration of the material on record and cannot be disturbed in an appeal under Order 43 of CPC which is an appeal on principle. For this purpose reliance is placed on the decision of the Supreme Court in ***Wander Ltd Vs. Antox India Pvt. Ltd.***[7] and ***Laxmikant V Patel Vs Cheatan Bhat Shah***[8]. It is submitted that mandatory injunction can be granted at the interim stage for restoration/preservation of status-quo ante, on the basis of a strong

[7] 1990 Supp 1 SCC 727
[8] AIR 2002 SC 275

prima facie case. For this purpose the learned counsel has placed common reliance on the decision of the Supreme Court in *Dorab Kavashi Warden and the case of Deoraj (supra).* It is submitted that mandatory injunction can be granted at the interim stage, although in rarest cases as held in ***Baban Landge Vs. Mahadu Tonchar & Ors.***[9] ***and Jivanbhai Patadia Vs. Bhavanjee Thakkar***[10]. It is submitted that grant or refusal of the interim relief in such cases is vital otherwise there is an attempt to tire out the bona fide litigant on the basis of a false claim as held in ***Maria Margarida Sequeira Fernandes Vs Erasmo jack de Sequeira***[11] and ***Mohd. Mehtab Khan & Ors. Vs. Kushnuma Ibrahim Khan***[12]**.**

18. It is submitted that section 40 of the Specific Relief Act permits damages being claimed in addition to the relief of injunction. It is only when the equities are in favour of the defendant and the defendant establishes special circumstances for not issuing injunction that the claim of damages may disentitle the plaintiffs to get an injunction. Reliance for the said purpose is placed on the decision of the Supreme Court in *Dalpat Kumar (supra)* and that of the Allahabad High court in ***Mahabir & Anr. Vs. Smt. Dayawat***[13].

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[9] AIR 1989 Bombay 247
[10] AIR 1995 Gujrat 92
[11] (2012) 5 SCC 370
[12] (2013) 9 SCC 221
[13] AIR 1977 Allahabad 393

19. It is submitted that there is no major delay in moving the court and the said aspect has been taken into consideration by the Trial Court. The learned counsel has placed reliance on the decision of this Court in ***Astra IDL Vs TTK Pharma Ltd***[14]

20. Insofar as the amendment seeking possession is concerned, it is submitted that the same is without prejudice to the claim of the plaintiffs being in possession of the suit property. It is submitted that the said amendment is sought by way of abundant caution and in view of the finding that the appellants are in de facto possession of the suit property. He submits that the impugned order is neither arbitrary nor perverse and needs no interference.

The rival contentions now fall for determination

21. At the outset it may be mentioned that the appellants have filed Stamp Application No. 2274 of 2019 for production of certain documents in this appeal. The said application has been allowed today by a separate order. Further it is made clear that consideration of the matter is being confined to the rival contentions and the documents pertaining to the suit property and not in relation to any alleged *modus operendi* employed by the appellants in grabbing various other properties as claimed on behalf of the plaintiffs.

[14] AIR 1992 Bombay 35

Scope of the appeal

22. The Supreme Court in the case of *Wander Ltd. (supra)* has held that an appeal under Order XLIII of CPC is essentially an appeal on principle. In a subsequent decision in the case of *Laxmikant V Patel (supra)*, it has been held that the appeal against the discretionary orders passed by the trial court is said to be an appeal on principal, and the appellate court cannot reassess the material and seek to reach a conclusion different from the one reached by the court below, unless and until the exercise of the discretion is found to be perverse. In a more recent decision, in the case of *Mohd. Mehtab Khan (supra),* the Supreme Court held that if the view taken by the trial court is a plausible view, the same is not liable to be interfered with in an appeal under Order XLIII . The impugned order has now to be examined in the light of the aforesaid principles and the rival contentions raised.

Findings by the trial court

23. The trial court has considered that the suit is based on title, although the appellants have raised a counter claim, they have neither sought any declaration nor specific performance of the deed of sale and transfer of the year 1980. The trial court has further considered the question whether the said deed can be used for collateral purposes, as admittedly, it is an unregistered deed and would

not convey title. In other words, the trial court has considered the question whether the said deed can be used for collateral purpose to show settled possession of the appellants, from the year 1980. The trial court after considering the decision of the Supreme Court in the case of (i) ***S. Kaladevi Vs. V. R. Somasundaram***[15]; (ii) ***Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.***[16]***;*** (iii) ***Avinash Chavan Vs. Vijay Mishra***[17]***;*** and (iv) ***K. B. Shaha and Sons Pvt. Ltd. Vs. Development Consultant Ltd.***[18], has held that an unregistered sale-deed can only be used to claim part performance, in terms of S. 53A of the Transfer of Property Act or seek specific performance. The trial court has found that in the instant case, the defendants have filed a counter-claim, but they have not prayed for specific performance of contract. The appellants are claiming to be the owners of the suit property in terms of the sale-deed and having regard to the fact that it is an unregistered sale-deed, it cannot be used for the purpose of determining the said issue in favour of the appellants.

24. The trial court has further found, as a matter of fact, that the case of the plaintiffs itself is that while they left for Margaon on 3rd April, 2019, in the evening the appellants again entered the suit house from the rear. The trial court has therefore found, and to my mind

[15] (2010) 5 SCC 401
[16] 2011 (6) SCC 737
[17] (2009) 2 SCC 532
[18] (2008) 8 SCC 564

rightly so, that on the date of filing of the suit, it was the appellants who were in *de facto* possession, although *de jure* possession, continued with the respondent nos 1 and 2 / plaintiffs. The trial court has ultimately found that the appellants have failed to show that they are in settled possession, and as such notwithstanding the fact that appellants have been found in *de facto possession*, which in my considered view would only be a notional act of possession, the trial court has granted the mandatory injunction at the interim stage on the premise that the respondents / plaintiffs have established a strong *prima facie* case.

25. The plaintiffs case is based on exclusive ownership and possession of the suit property, from the year 2005. Prior thereto it is claimed that the property which was purchased by the father/father in law of the plaintiffs in the year 1962, was standing in the name of Atchuta and his two brothers. The plaintiffs are relying on the decree of the civil court of the year 1985 and the arbitral award of the year 2008. On the contrary the appellants are claiming to be the owners in possession of the suit property on the basis of the deed dated 17.3.1980 which is claimed to be executed by Atchuta Raiturkar and his wife Indumati @ Shubhada in favour of father / father in law of the appellants. In other words, the appellants are not denying that Mr.

Achuta Raiturkar was the owner of the property at least till 1980. In fact, even according to the appellants Achuta Raiturkar and his wife are their predecessors in title. According to the respondents, the said document is forged and does not bear their signature. For this purpose, the respondents have produced a report of Mrs. Samiksha Govenkar a hand writing expert. It can be seen that the said deed of 1980, by virtue of which the appellants are claiming to be the owners, is an unregistered document, which *prima facie* cannot be reckoned as a document of title inasmuch as any such document purporting to transfer ownership of immovable property is compulsorily registrable. Thus at this stage, insofar as the question of title is concerned, prima facie the weight of the documentary evidence is in favour of the plaintiffs than the appellants. However according to the appellants, they are in possession of the suit property as owners thereof on the basis of the said document of the year 1980. The parties have produced several documents in support of their rival claim as to being in settled possession of the suit property. The learned counsel for the parties have challenged the genuineness and the relevance of the documents of the adversary. Before considering the same, it is necessary to note that at this stage the effect of the said documents can only be considered in a *prima facie* manner in order to find out who was in settled possession of the said property. The proof and the probative value of the said documents can only be gone into in details at the trial. It is also necessary to note that even according to the respondents on 3.4.2018 in the afternoon they had removed the locks, allegedly put by the appellants, and in the same evening the appellants re-entered the house from the rear and deployed the security guards. It is in this context that the finding of the trial court as to the appellants being in *de facto* possession of the suit property as on the date of the filing of the suit that is in June 2018 has to be viewed. The parties have also lodged complaints and counter complaints against each other with the police.

26. I have carefully considered the documents, which have been produced by the parties in support of their rival claim as to the settled possession, and I do not find that the findings of the trial court can be said to be perverse or against the weight of the evidence on record. It is necessary to note that the deed of the year 1980, on the basis of which the claim of the appellants is based, is admittedly an unregistered document and cannot convey title. As noticed earlier that the trial court has found that it cannot be used for collateral purposes to show possession. Even assuming that the said document can be so used, there are several circumstances, which have been considered by the trial court to come to conclusion that the appellants cannot be said

to be in settled possession of the suit property, as on the date of the suit and for the matter of that on 3rd April, 2019. *Prima-facie* it has clearly come on record that on or about the date of the suit the suit house was not actually used for commercial purpose, and / or for residence and was lying vacant. This would also be apparent from the condition of the suit house, as depicted in the photographs, which have now been sought to be produced on behalf of the appellants. According to the respondents / plaintiffs, after shifting the business of M/s. Govind Pai Raiturkar Engineering Ltd., the house was not continuously occupied and the plaintiffs used to occasionally stay in the suit house, whenever they used to be in Panaji. However, one thing is clear, as noticed earlier, that the suit house is not shown in habitable condition in near past. There are several house tax receipts continuously from 2004 to 2017 (except for the year 2002-03 which were pertaining to certain property at Ribander which according to these respondents were produced out of inadvertence), electricity bills and water bills, which are produced by the respondents / plaintiffs to *prima facia* show their possession. The appellants have produced a letter, purportedly written by Atchut Raiturkar in the year 1980, to the electricity department for change of electricity connection in the name of Narayan Pai and to show that the house tax record in the name of appellants, and an agreement with the security agency of April, 2017. The learned trial court has held, and in my view rightly so, that the only documents which can be considered in favour of the appellants, is the letter addressed to the electricity department in the year 1980 and the letter of possession and leave and license agreement the other documents being fairly recent. It is necessary to note that although the appellants claim to be in possession of the suit house from the year 1980, the house tax bills, electricity and water connection are not got transferred in their name for sufficiently long time. Even assuming that, as there was no dispute, the appellants allowed it to continue the same in the name of respondents / plaintiffs , it is not shown as to how the custody of the electricity bills, water bills and house tax is with the plaintiffs. It is necessary to note that *prima facie* the water bills (page 397 of the additional compilation) and the water charges are paid by the Engineering works. At page 386 of the additional compilation is a letter dated 29.11.2016 purportedly signed for and on behalf of Atchuta Raiturkar and not by Atchuta, addressed to the Assistant Engineer Electricity department asking the bill to be changed to minimum as the house is closed and no body was residing in it and there is a receipt paying Rs. 2000 in advance. At page 303 is a bill with a receipt of Rs 5,000/ although the bill is negative in the sum of Rs 2237/-. At page 304 is the first tax receipt by the appellants which is dated 2.4.2018 the day on which the dispute started. *Prima facie* it appears that these payments are made to create evidence about possession. At page no. 100 if the agreement with the security agency dated 1.4.2017. The leaned counsel for the respondents / plaintiffs pointed out a letter from Amit Pai dated 2.4.2018 in order to submit that the security agency was engaged from 3.3.2018. In order to counter this it is submitted by the learned counsel for the appellants that this was an additional engagement for day time also. However *prima facie* it appears from Annexure I of the agreement with the security agency (and which sets out the details of the security services agreed upon) that the quote of charges is for twelve hours and it does not show that the initial engagement was only during night. Insofar as the letter dated 18.3.1980 (page 90) to the chief electrical engineer and the letter dated 18.3.1990 (page 296) to the "Mayor" Panaji Municipality is concerned, none of these letters bear any in word number or stamp of the concerned department/authority to show its receipt. It is in this context that the contention on behalf of the respondents that in any case the change was got effected behind the back of these respondents has to be appreciated. Coming to the leave and license agreement of the year 1992-93 and keeping aside for a moment the issue whether the said document is a forged document, the trial court has rightly found that the said document is pitted against the water connection application made by the M/s. G P Raiturkar and sons and the letter of Assistant Commissioner of taxes. There are documents showing the office of one M/s. Govind Pie Raiturkar Enginnering Pvt. Ltd. and the receipts of the year 2002 and the letter of 27th October, 1986 by the Assistant Sales Tax Officer, Morgao and an application dated 21st November, 2008 for electricity connection, made by M/s. Govind Pie Raiturkar Engineering Pvt. Ltd., which would be contrary to the claim of settled possession, as made by the appellants. I find that the view taken by the trial court on the basis of the prima facie consideration of the documents is certainly a plausible view and does not suffer from any infirmity or perversity.

27. A brief reference at this stage needs to be made to the documents of which production has been allowed in this appeal. The documents principally consist of a vehicle registration with the RTO, in the name of Narayan Pai showing his address as House no. 13/250 D B Road Miramar Panaji Gao, which is the suit house which is now bearing no. 13/866, and two sets of the photographs one each dated 1.8.2002 and 15.6.2005. The other document is pertaining to a different house situated at Ribander. The vehicle registration or the photographs in my view cannot *prima facie* establish possession of the appellants or their predecessors. *Prima facie* it appears that the address in the RTO record is given by the owner and there is nothing to show

that it is independently verified by the said authority. The photographs make it amply clear that the structure is not in habitable condition and mere clicking of such photographs, cannot *prima facie* show or establish settled possession of the appellants.

Law relating to grant of mandatory injunction at the interim stage

28. It is now well settled that the court in a given case can grant mandatory injunction at an interim stage for restoration of *status-quo ante.* The Supreme Court in the case of *Dorab Kavashi Warden (supra),* has held that normally, such an injunction in the mandatory form shall be granted where - (i) the plaintiff has strong *prima facie* case, which is at a higher standard than a *prima facie* case, that is normally required for a prohibitory injunction; (ii) it is necessary to prevent irreparable or serious injury, which normally cannot be compensated in terms of money; and (iii) when the balance of convenience is in favour of one seeking such relief.

29. It is necessary to note that wherever the case is based on possession, it has to be referable to some title may as an owner or a lessee or a licensee. In a given case the plaintiff can come with a case of settled possession. It is necessary to note that it is the settled possession, which needs to be protected even where it is found to be

without any right or title. Such an injunction in latter case can be granted till the person is evicted in due course of law. In the present case, the appellant is basing his claim solely on the deed of the year 1980, which being unregistered is not a document of title. The appellant has also failed to establish settled possession. On the contrary, the respondents / plaintiffs have *prima facie* shown to be the owners and although they may have notionally lost possession on 3rd April, 2019, it is only a *de facto* possession, which is with the appellant, as has been held by the learned trial court. The *de jure* possession continues to be with the respondents. The basic principle is that law would protect a person having a semblance of title, may be as an owner or a tenant or licensee or any other case of permissive possession or even a rank trespasser, provided he is shown to be in settled possession. The object to protect the settled possession (in a given case even that of a trespasser) is to ensure that the parties do not take law into their hands and try to usurp possession otherwise than in due course of law. The Supreme Court in the case of ***Rame Gauda Vs. M. Vardeappa Naidu & Anr.***[19] has held that "settled possession" must be (i) effective; (ii) undisturbed; (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The Supreme Court has held that the test laid down by it in the earlier decision in the

[19] (2004) 1 SCC 769

case of ***Puran Singh Vs. State of Punjab***[20] is a working rule for determining the attributes of "settled possession". It is not necessary to multiply authorities on the point. Once it has been *prima facie* found that the appellants have failed to show settled possession, the appellants cannot be allowed to usurp possession by mere entry in the suit property and deployment of security guards, and thus, there is nothing wrong in the finding by the trial court where it held that the respondents have shown strong *prima facie* case for grant of such mandatory relief at the interim stage. Even insofar as irreparable loss is concerned, the loss of such possession itself would amount to *per se* irreparable loss and injury, which cannot be compensated in terms of money.

30. A brief reference may now be made to the decisions cited on behalf of the appellants. In ***Thimmaiah Vs. Shabira & Ors.***[21] the suit was filed simplicitor for injunction, in respect of site No. 43, claimed to be purchased by plaintiff No. 1. The defendant No. 1, who was the contesting party, claimed that it is he who had purchased the site from defendant No. 3. The trial court dismissed the suit. It was found that the High Court had allowed the appeal without considering the question as to who was in possession. It was in these

[20] (1975) 4 SCC 518
[21] (2008) 4 SCC 182

circumstances that the matter was remitted back to the High Court. There cannot be any dispute with the proposition that an injunction, particularly in the prohibitory form would require the plaintiff to show his possession. As noticed earlier in *Thimmaiah (supra),* the matter turned on the fact that there was no issue framed as to who was in *possession*. In the present case, the question is as to who is in *de jure* possession, and it has been found that it is the plaintiff, who is in *de jure* possession. So, indeed there is a finding in this case as to the possession of the plaintiffs.

31. In *Purshottam Raheja (supra)*, a joint property was developed. The respondent / plaintiff sought eviction of the appellants / defendants from the suit property and complete control of development project as an interim relief. The learned Single Judge granted a limited protection safeguarding interest of both parties, but refusing to hand over the complete control. That order was set aside by the Division Bench. It was in these circumstances held that there was nothing wrong in the learned Single Judge granting limited interim relief and the Division Bench was in error in interfering with the said order. It was in the peculiar circumstances that there was a development of, admittedly a joint property, in which plaintiff sought complete control over the development project, that it was found that

mandatory injunction could not have been granted.

32. The case of ***M/s. Deeksha Holding Ltd. Vs. Smt. Sita Ram Naik Desai***[22] was cited in support of the submission that on account of delay and laches, the plaintiff was not entitled to any relief. It is necessary to note that the question of delay and laches would invariably depend upon the facts and circumstances of each case, and in a given case, would also depend upon the explanation of delay, if any. In the said case, the case of the plaintiff was that they came to know about the sale-deed dated 28th August, 1969 and 17th November, 1969 in respect of sale of the property somewhere in November, 1996. It was further the case that the plaintiffs, in the other suits, came to know about the proposed hotel project in the suit property some times in August, 1997 and the suit was filed in February, 1998. It was, in these circumstances, held that the delay was sufficient to deny any relief. In the present case, the case of the plaintiff is that the defendants entered the suit house in the evening of 3rd April, 2019 and the suit came to be filed in June, 2018, which has been held to be not material by the trial court. I do not see any infirmity or perversity in the said finding.

33. The case of *Morto Agashikar (supra)* also turned on its

[22] 1998 (2) Goa L. T. 443

own facts, inasmuch as in that case, the plea was that of surrender of tenancy, which the court fund that under the special protection under the eviction of tenants, any theory of implied surrender of tenancy or lease must be entirely proved by the one advancing it, otherwise the presumption is that of continuation of tenancy.

34. The case of ***Best Sellers Retail (India) Pvt. Ltd. Vs/ Aditya Birla Nuvo Ltd. & Ors.***[23]**,** also in my humble opinion, turned on its own facts. It is true that claim of liquidated damages or possibility of the court granting the same may be one of the considerations, which would be relevant while considering the issue of grant of temporary injunction. However, nothing is brought to my notice that the claim of such liquidated damages would invariably result into refusal of interim relief of injunction or to put it otherwise the claim of such liquidated damages would be an absolute bar in granting interim injunction, either prohibitory or mandatory in nature. At the cost of repetition, it needs to be stated that here the case of the appellants is based on an unregistered document of title against their predecessors and the appellants having failed to show that they are in settled possession of the suit property.

35. Lastly, in *Colgate Palmolive (India) Ltd. (supra)*, reliance

[23] 2012 (5) 769

is placed on para 9 of the judgment, in which it has been held that "Generally," however, the interlocutory remedy by way of a grant of an order of injunction is intended to preserve and maintain status quo and to protect the plaintiff against invasion of his rights and for which there is no appropriate compensation being quantified in terms of damages. It is necessary to note that the case of *Colgate Palmolive (supra)* arose out of an order passed by the Commission, under the Monopolies and Restrictive Trade Practices Act, 1969 pertaining to "Colgate Toothpaste", a product of Colgate Palmolive India Limited on the basis of a claim made by M/s. Hindusthan Lever Limited. It may be noted that under the relevant provisions off the said act one of the conditions for grant of temporary injunction is that such trade practice is likely to affect prejudicially the public interest. Thus, in my considered view, the decision clearly turned on its own facts.

36. Even insofar as the argument based on the amendment sought by the plaintiffs post the grant of the injunction is concerned, it is necessary to note that it has all along been the case of the plaintiffs that they are in possession of the suit property. However the amendment is sought without prejudice to their claim and by way of abundant caution in as much as the trial court has held the appellants to be in *defacto* possession of the suit property. It is not known whether

the amendment is allowed or not. *Prima facie* it can be seen that there is no prohibition for a party claiming such relief or an alternate relief. In any case in the facts and circumstances of the case I do not find that the fact that the plaintiffs have sought such amendment without prejudice to their claim can be decisive or can come in the way of granting the relief as has been granted by the impugned order. It is further necessary to note that the learned trial court while granting the relief has balanced the equities, securing the interest of both the parties by directing that during pendency of the order of injunction the plaintiffs shall not effect any structural changes of major nature to the suit house.

37. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity, so as to require interference. The appeal is without any merit and is accordingly dismissed with no order as to costs. It is, however, made clear that the observations herein are for the limited purpose of examining the validity of the impugned order. The trial court shall not be influenced by the same at the trial of the suit.

38. At this stage, Mr. Bhobe, the learned counsel for the Appellants requests for extension of the stay for a period of eight weeks in order to enable the appellants to consider further steps, if any,

to be taken in the matter. The learned counsel for the respondents opposes the same. However, considering the fact that interim stay was operating during the pendency of the appeal and in order to afford a fair opportunity to the appellants, the stay shall continue to operate for a period of eight weeks.

Sd/-
C. V. BHADANG, J.