

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO. 23 OF 2016**

1. Mr. Ricardo Agnelo Teixeira De Almeida Queiroz,
son of late Mr. Late Jose Maria Queiroz,
aged 61 years, married,
residing at H. No.B-6,
F-1, Sapana Park, Ponda Goa.
2. Mrs. Vivian Gladys Mendonca Queiroz,
daughter of late
Mr. Benjamin Xavier Cirilo Mendonca
and wife of the Appellant No.1 above
named, aged 52 years, housewife,
residing at H.No.B-6, F-1, Sapana Park,
Ponda Goa through their Constituted
Attorney Mr. Xavier Fialho. ... Appellants

Versus

1. Mr. Rajesh Sawal,
son of Vishnum Sawal,
aged 35 years, businessman,
married, residing at H.No.1312,
Viridi, Sanquelim, Bicholim,
Taluka Goa.
2. Mrs. Rajesh Sawal,
wife of Respondent No.1,
aged 32 years, housewife,
residing at H.No.1312, Viridi,
Sanquelim, Bicholim Taluka Goa.

3. Mr. Eca Patricio Bernadino Teixeira
de Almeida Queiroz,
aged 72 years, retired, married,
residing at H.No.163/C,
near Basilica Bom Jesus, Ella,
Old Goa, Ilhas, Goa.
4. Mrs. Terezinha Martins e Queiroz,
wife of Respondent no.3,
aged 65 years, married, housewife,
residing at H.No.163/C,
near Basilica Bom Jesus,
Ella, Old-Goa, Ilhas, Goa.
5. Mr. Luis Joao Eusebio Teixeira
de Almeida Queiroz,
son of late Mr. Jose Maria Teixeira
de Almeida,
aged 70 years, divorcee,
residing at H.No.163/C,
near Basilica Bom Jesus,
Ella, Old-Goa, Ilhas, Goa.
6. Mr. Mario Martinho Teixeira
de Almeida Queiroz,
son of late Mr. Jose Maria Teixeira
de Almeida Queiroz,
aged 58 years, married,
residing at H.No.163/C,
near Basilica Bom Jesus,
Ella, Old-Goa, Ilhas, Goa.
7. Mrs. Annie Queiroz,
wife of Respondent no.6,
aged 40 years, married,
housewife, residing at H.No.163/C,

near Basilica Bom Jesus,
Ella, Old-Goa, Ilhas, Goa.

8. Mr. Malcom Teixeira
de Almeida Queiroz,
aged 26 years,
unmarried, businessman,
residing at H.No.163,
near Basilica Bom Jesus,
Ella, Old-Goa, Ilhas, Goa.
9. Mrs. Maria Gema Ivone
Santana Souza, widow of
late Mr. Antonio Santa Cruz
Teixera de Almeida Queiroz
alias Antonio Queiroz,
major in age, household,
residing in Bldg. No.A-F 103,
Dhanlaxmi Nagar Co-operative
Housing Society Ltd.,
Bhatlem, Panaji, Goa.
10. Mr. Edwin Teixeira
de Almeida de Queiroz,
son of late Mr. Antonio Santa
Cruz Teixeira de Almeida
Queiroz alias Antonio Queiroz,
major in age, bachelor, service,
residing in Bldg. No.A-F 103,
Dhanlaxmi Nagar Co-operative
Housing Society Ltd.,
Bhatlem, Panaji, Goa.
11. Ms. Valancany Teixeira
de Almeida de Queiroz,
daughter of late Mr. Antonio Santa

Cruz Teixeira de Almeida
Queiroz alias Antonio Queiroz,
major in age, unmarried, service,
residing in Bldg. No.A-F 103,
Dhanlaxmi Nagar Co-operative
Housing Society Ltd.,
Bhatlem, Panaji, Goa.

12. Ms. Maria Gema Teixeira
de Almeida Queiroz,
daughter of late Jose Maria
Teixera Almeida de Queiroz,
major in age, unmarried,
residing at H.No.163,
near Basilica Bom Jesus,
Ella, Old Goa, Goa 403402.
13. Mr. Minguel Mateus Gonsalves,
husband of late Mrs. Fatima
Teixera de Almeida Queiroz,
son-in-law of late Jose Maria
Teixera de Almeida Queiroz,
major in age, retired, residing at
Opp. Vincent Pub Bar, Fondvem,
Ribandar, Goa. 403 006(since deceased)
through his legal representatives
13(a) Mrs. Anastasia Fernandes,
daughter of late Minguel
Mateus Gonsalves,
aged 49 years, married,
housewife and her husband;

13(b) Mr. Anthony Fernandes,
son of late Mr. Minguel
Mateus Gonsalves,
aged 58 years, retired,

Both residing at Flat no.G-2,
B-Wing, Agnelo Colony,
Caranzalem, Goa, 403402.

13(c) Mr. Camilo Gonsalves,
son of late Mr. Minguel
Mateus Gonsalves,
aged 47 years, married,
landlord, and his wife,

13(d) Mrs. Joanita Gonsalves,
aged 43 years, housewife,
both residing at H.No.326,
Fonduem, Ribandar, Goa.
403006.

13(e) Mrs. Bernadata Silva,
daughter late Mr. Minguel
Mateus Gonsalves,
aged 46 years, widow of
Mr. Thomas Silva, household,
r/at H.No.167,
Firguem Bhat, Goa-Velha,
Tiswadi, Goa.

13(f) Ms. Rossiya Silva,
daughter of late Mr. Tomas Silva,
student, aged 21 years,
residing at H.No.167,
Firguem Bhat, Goa-Velha,
Tiswadi, Goa.

13(g) Mr. Agnelo Silva,
son of late Mr. Tomas Silva,
student, aged 18 years,
residing at H.No.167,

Firguem Bhat, Goa-Velha,
Tiswadi, Goa.

13(h) Mrs. Ditosia Fernandes,
daughter of late Mr. Minguel
Mateus Gonsalves,
major in age, service,
and her husband;

13(i) Mr. Adelino Fernandes,
major in age, service,
both residing Opp.
La Paz Hotel,
Vasco-da-Gama, Goa.

14. Mrs. Laetitia Leny Saldanha,
widow of late Mr. Francisco
Xavier Filomena Teixeira de
Almeida Queiroz, aged 72 years,
household, residing at H.No.207/9,
Plot No.2-B, Housing Board Colony,
Altinho, Mapusa, Bardez, Goa.
15. Mr. Colin Peter Wilson Queiroz,
son of late Mr. Francisco Xavier
Filomena Teixeira de Almeida
Queiroz, aged 45 years, married,
service, residing at H.No.207/9,
Plot No.2-B, Housing Board Colony,
Altinho, Mapusa, Bardez, Goa.
16. Mrs. Swati Colin Queiroz,
daughter of Mr. Shrikanth Gunphule,
aged 43 years, service, residing at
H.No.207/9, Plot No.2-B, Housing
Board Colony, Altinho, Mapusa,
Bardez, Goa.

17. Mrs. Monte Celsa Queiroz
e Soares, daughter of
late Mr. Francisco Xavier
Filomena Teixeira de Almeida
Queiroz, aged 43 years,
residing at H.No.207/9,
Plot No.2-B, Housing Board Colony,
Altinho, Mapusa, Bardez, Goa.
 18. Mr. Ashley Peter Francis Soares,
son of late Mr. Edward Francis
Soares, aged 49 years, service,
residing at H.No.207/9, Plot No.2-B,
Housing Board Colony, Altinho,
Mapusa, Bardez, Goa.
 19. Mr. Richard Dennis Fernandes,
son of late Mr. Mathew Fernandes,
aged 34 years, bachelor,
residing at H.No.163,
Near Basilica Bom Jesus,
Ella, Old Goa,Goa.
 20. Mrs. Sandra Mesella Fernandes,
daughter of late Mr. Mathew Fernandes,
aged 28 years, married, residing at
H.No.163/A, Near Basilica Bom
Jesus, Ella, Old Goa, Goa 403402 and
her husband;
 21. Mr. Vinod Gaude,
major in age, residing at H.No.163/A,
near Basilica Bom Jesus, Ella,
Old Go, Goa 403402.
- ... Respondents

Mr. Nitin Sardesai, Senior Advocate with Mr. Vibhav Rajiv Amonkar, Advocate for the Appellants.

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Kenny, Advocate for Respondent Nos.1 & 2.

Coram:- M. S. SONAK, J.

Date:- 8th October, 2020

ORAL JUDGMENT

Heard Mr. N. Sardesai, learned Senior Advocate who appears alongwith Mr. Vibhav Amonkar for the Appellants and Mr. S. D. Lotlikar, learned Senior Advocate who appears alongwith Ms. S. Kenny for Respondent Nos.1 and 2, who are really the contesting Respondents in so far as the issue raised in this appeal is concerned.

2. The challenge in this appeal is to the order dated 26th February, 2016 made by the learned Senior Civil Judge 'A' Court, Panaji Goa, declining the Appellants (original Plaintiffs), the interim relief to restrain the Respondent Nos.1 and 2 from carrying out any business in the structure which they occupy in the suit property. By the same impugned order, however, the learned Trial Judge had partly allowed the Appellants' application for interim relief and restrained the Defendants in the suit from carrying out construction of any structure or carrying out any work of construction of whatsoever nature in the suit property.

3. There is no injunction in favour of the Appellants right from the date of institution of the suit, in so far as the restraining Respondent Nos.1 and 2 from carrying out any business in the structure in the suit property. The suit itself at an advanced stage. In such circumstances, it will really not appropriate for this Court, at this stage to consider the grant of any restraint pending the disposal of the suit.

4. Mr. Sardesai, learned Senior Advocate for the Appellants however points out that in this Court the Appellants had taken out an application seeking for mesne profit at the interim stage relying upon the decision of the Hon'ble Apex Court in the case of *Maria Margarida Sequeira Fernandes and others Vs Erasmo Jack De Sequeira (Dead) Through Lrs.*¹ Mr. Sardesai submits that the Appellants, may be granted liberty to file application seeking mesne profit at the interim stage before the Trial Court and the Trial Court may be directed to dispose of such application expeditiously since the disposal of the main suit itself at an early date may not be possible on account of pendency of matters. He points out that there is an observation in the impugned order to the effect that the Respondent Nos.1 and 2 are running a legal business in the suit property and therefore, it may be clarified that this issue is left open at the stage of deciding the application seeking mesne profit at the interim stage.

5. Mr. Lotlikar, learned Senior Advocate for Respondent

¹ (2012) 5 SCC 370

Nos.1 and 2 points out that there is no necessity of any clarification because there is nothing wrong in observing that the Respondent Nos.1 and 2 are carrying on legal business in the suit property. He therefore submits that in case in law the Appellants are entitled to maintain an application seeking mesne profit at the interim stage, they may file such application and it will then for the Trial Judge to dispose of such application on its own merits and in accordance with law.

6. Having considered the rival submissions on this issue, to my mind there can be absolutely no difficulty in permitting the Appellants to file an application seeking mesne profit at the interim stage before the learned Trial Court in the pending suit. Such application, will obviously have to be decided on its own merits and in accordance with law and this hardly any occasion for this Court to make any observations or remarks on the same. However, the Trial Court while deciding this application need not be influenced by any of the observations in the order which is impugned before this Court including the observation that the Respondent Nos.1 and 2 are running a legal business in the suit property. The issue as to whether such business is being legally run or not or the issue as to whether the structure in question is legal or not for want of appropriate permissions from the local authorities etc. are all issues which are not adjudicated upon by this Court and therefore, such issues, are clearly left open for consideration by the learned Trial Court. Therefore, merely because the

impugned order is not being interfered with, it is not as if, the Trial Court should regard this issue as closed.

7. In case, the Appellants file an application for seeking mesne profit at the interim stage, then, the learned Trial Court is directed to dispose of such application as expeditiously as possible and in any case within a period of three months from the date of such application is filed.

8. This appeal is dismissed primarily because at this stage there is really no case made out to restrain the Respondent Nos.1 and 2 from carrying on business which, they claim have been carrying out for some time and on the basis of certain deeds and documents, which no doubt, have been questioned in the suit.

9. Therefore, by granting liberties and making clarification as aforesaid, this appeal is disposed of. Pending Misc. Civil Application is also disposed of.

10. All concerned to act on the basis of the authenticated copy of this order.

M. S. SONAK, J.

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