

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 5 OF 2016

WITH

CIVIL APPLICATION NO.16 OF 2016

1. Mr Joseph Clive Sequeira
major of age, Indian National,
s/o. late Estaquino Sequeira,
2. Mrs. Fortune Mary Sequeira,
major of age, Indian National,
d/o. Joao Batista Braganca,
both resident of House no.21/15/A,
Aivao, Dona Paula, Ilhas, Goa.

...Appellants.

Versus

1. Expanse India Buildcon Pvt. Ltd.,
a company incorporated under
the Indian Companies Act, 1956,
having its registered office at
SF-13, Goa Housing Board
Residential and Commercial Complex
Alto-Betim, Porvorim, Bardez, Goa,
Through its Director
Mr. Shraju Khadar alias Shraju Jader,
Major of age, Indian National,
son of C.M.A. Khadar,
resident of House no.S3-B9,
Milroc Retreat,
Ribandar, Ilhas Goa.

2. Mr. Joao Batista Braganca alias
 John Batista Braganca,
 alias John B. Braganca,
 major of age, Indian National,
 son of Jose Simplicio Braganca,
 resident of House no.422,
 Aivao, Dona Paula, Ilhas, Goa.

.... Respondents.

Mr. A. D. Bhobe, Advocate for the Appellants.

Mr. S. D. Padiyar, Advocate for the Respondent No.1.

Mr. M. S. Joshi, Advocate for the Respondent No.2.

Coram : M. S. SONAK, J.

Date : 01st October, 2020

ORAL JUDGMENT:

Heard Mr. A. D. Bhobe, learned Counsel for the appellants, Mr. Sandesh D. Padiyar, learned Counsel for the Respondent No.1 and Mr. M. S. Joshi, learned Counsel for the Respondent No.2.

2. The challenge in this appeal is to the order dated 07.04.2015 made by the learned Civil Judge Senior Division 'A' Court, Panaji-Goa, in Special Civil Suit No.10/2012/A granting the Respondent No.1 (original plaintiff) temporary injunction and restraining the appellants herein from interfering with the suit plot which includes the suit shed therein.

3. The aforesaid interim relief is in operation from 07.04.2015, since, there was no interim relief granted by this court in this appeal. The suit is also posted for evidence of the plaintiffs which has possibly not proceeded on account of the pandemic situation.

4. Mr. Bhobe, the learned Counsel for the appellant submits that the suit shed is in possession of the appellant from the period prior to the year 1998. He refers to a notice dated 11.09.1998 issued by the Panaji Municipal Council directing the predecessor in title of the appellant to demolish the said shed on the ground that the same was put up allegedly without obtaining prior permission from the Council. He also refers to the show cause notice dated 15.01.1999 again issued by the Panaji Municipal Council to the predecessor in title of the appellant, in relation to the suit shed in the suit property. He points out that after a suitable reply was furnished to the Panaji Municipal Council, no action was taken and the predecessor in title of the appellant and thereafter the appellants, continue to be in possession of the suit shed. He also points out that the Respondent No.1-plaintiff, has only made a mild statement in relation to the said shed but has not produced any documents whatsoever to establish that the said shed was indeed constructed by the Respondent No.1 or even possessed by the Respondent No.1. In these circumstances, he submits that the interim order warrants interference.

5. Mr. Padiyar, the learned Counsel for the Respondent No.1, supports the impugned order on the basis of the reasoning referred therein. He points out that by Sale Deed dated 08.01.2007 all rights, title and interest to the suit as also anything as contained in the suit plot was sold by the predecessor in title of the appellant to the Respondent No.1. He points out that in this Sale Deed, there is no reference made of the shed of the appellant or any other person being in possession of the said shed. He points out that the Respondent No.2, who is the predecessor in title of the appellant has also filed written statement supporting the case of the Respondent No.1-original plaintiff.

6. Mr. Joshi, the learned Counsel who appears for Respondent No.2 however submits that the Respondent No.2 does not wish to take any sides in this matter. He points out that it is for this reason that the Respondent No.2 has denied everything in this matter.

7. The rival contentions now fall for my determination.

8. On the basis of the two documents pointed out by Mr. Bhobe, it is difficult to hold that the appellant was in possession of the suit shed which is situated in the suit plot, particularly, because the plot has been sold by the predecessor in title of the appellant by a

registered Sale Deed dated 08.01.2007. If indeed, the appellant, who is the son-in-law of the Respondent No.2 who was the predecessor in title, was in possession of the suit shed, then, certainly, there would be a reference of this aspect in the Sale Deed dated 08.01.2007. Based upon the 2 notices from the Panaji Municipal Council issued almost 10 years prior to the execution of the Sale Deed, it cannot be said that the appellants have made out any prima facie case of being in possession of the suit shed. Incidentally, the notices also allege that the shed was nothing but an illegal construction which was required to be demolished. On the basis of such notices, no case can be said to have been made out supporting the appellants' possession.

9. The learned Trial Judge, has considered the matter in the proper perspective. There is neither any jurisdictional error pointed out nor can this be said to be a case involving any perversity of justice. Therefore, keeping in mind the particulars laid down by the Hon'ble Supreme Court in *Wander Ltd. And Anr. v/s. Antox India P. Ltd.*,¹ the impugned order does not warrant any interference. This appeal is, therefore, dismissed.

10. There shall be no order as to costs.

11. Although, the impugned order has been upheld, it is clarified that the suit as filed will have to be decided on its own merits

¹ 1990 Supp (1) SCC 727

and in accordance with law without, in any manner, being influenced by any of the prima facie observations in the impugned order or for that matter, the present order.

12. The civil application does not survive and the same is also disposed of.

13. All concerned to act on the basis of the authenticated copy of this Order.

M. S. SONAK, J.

msr.