

IN THE HIGH COURT OF BOMBAY AT GOA.

**WRIT PETITION NO. 571 OF 2019 & APPEAL FROM ORDER
NO.8 OF 2010.**

ELVIRA LAURA DO REGO
@ ELVIRA GONSALVES
@ ELVIRA R. GONSALVES
AND 16 ORS.,

... Petitioners.

Versus

NONO KUNKOLKAR @
NUNO KUNKOLIENKAR
@ NUNO ROSARIO AND ANR.,

... Respondents.

Shri S. G. Desai, Senior Advocate with Shri V. Parsekar, Advocate for
the petitioners.

Shri N. Sardesai, Senior Advocate with Shri G. Panandikar, Advocate for
the respondent nos.1 and 2.

**WITH
APPEAL FROM ORDER NO. 8 OF 2010.**

NONO KUNKOLKAR @
NUNO KUNKOLIENKAR
@ NUNO ROSARIO AND 12 ORS.,

.... Appellants.

versus

ELVIRA LAURA DO REGO
@ ELVIRA GONSALVES
@ ELVIRA R. GONSALVES
AND 16 ORS.,

.... Respondents.

Shri N. Sardesai, Senior Advocate with Shri G. Panandikar, Advocate for
the appellants.

Shri S. G. Desai, Senior Advocate with Shri V. Parsekar, Advocate for
the respondents.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 16th January 2020.

P.C.

There are 31 plaintiffs in Regular Civil Suit No.64/2009/B before the Civil Judge, Senior Division, Panaji. The suit was against 13 defendants. In that suit, the trial Court initially ordered *status quo*. Later, after appreciating the rival contentions, the trial Court through its interim order, dated 11.2.2010, restrained the defendants in the following manner:

“Hence, pending the hearing and disposal of the suit, the defendants 1 and 2 are hereby restrained from in any manner changing the status of the suit house constructed in terms of the reconstruction licence dated 26.12.2008, and are further restrained from occupying the same in any manner.

The defendants 1 and 2, 16 to 27, their agents, servants etc. are further restrained, pending the hearing and disposal of the suit, from in any manner interfering in the suit property or changing its status quo or putting up any sort of construction in the suit property and from encumbering, alienating or transferring or creating any third party right in the suit property what so ever in respect thereof.

The defendants 3 to 10, their agents, servants, employees, etc. are restrained, pending the hearing and disposal of the suit, from in any manner, carrying out any type of construction in the suit property, more particularly surveyed under survey no.239/1 and further from cutting the hilly portion of the suit property or extending the said house 'A' in any manner whatsoever or constructing toilet block or any additional room to the same or changing the present status quo of the suit property in any manner whatsoever.”

2. Later, on the same day, the defendants applied to the trial Court for the stay of that order. Then, the trial Court modified the order to the following effect:

Operation of the order shall be stayed for a period of 15 days except for the specific order of restraint against the defendants nos. 3 to 10, in the interest of justice.

3. Against the interim injunction, the defendants filed this Appeal From Order No. 8/2010. This Court has further modified the order and held that the defendants would not create third party interest, but they may continue to possess the property.

4. At any rate, the plaintiffs complained under Order 39, Rule 2(a) of the CPC to the trial Court that despite injunction, the defendants went ahead, raised a structure, and even occupied that. But the trial Court dismissed the plaintiffs' application.

5. Aggrieved too the plaintiffs have approached this Court; they filed Writ Petition No.571/2019.

6. Now both the learned Senior Counsel agree that the trial is yet to begin, though issues have already been framed. According to them, the dispute between the parties involves disputed questions of fact and they need adjudication based on the evidence. So, they agree that this Court may close the Appeal against Order as well as Writ Petition and leave it for the trial Court to decide the suit on the merits expeditiously in six months.

7. Indeed, both the learned Senior Counsel agree that

- (i) the defendants will continue to possess the suit houses;
- (ii) the defendants will not change the physical features of the property; and
- (iii) that they will not create any third-party rights.

8. I clarify that this arrangement is pending the disposal of the suit and it does not amount to either party's admitting the rights of the other parties in any manner. And all the issues in the suit are left open.

9. As suit is pending for over a decade, the trial Court will endeavour to dispose of the suit expeditiously, preferably, in six months.

10. Earlier, as I have already noted, the plaintiffs complained that the defendant nos. 1 and 2 violated the trial Court's injunctive order. In fact, they applied under Order 39 Rule 2(a) of CPC. In that application, they set out the alleged disobedience. And the Defendant nos.1 and 2 filed their reply and disputed the plaintiffs' claim.

11. As they are subsequent developments, the plaintiffs want to bring them on record by way of amendment. The learned Senior Counsel for the respondents no.1 and 2 agrees that the plaintiffs may amend their pleadings as they set out in their application under Order 39, Rule 2A of CPC. But the trial Court will allow the defendant nos.1 and 2 to amend their written statement correspondingly, to meet the plaintiffs' allegations being brought on record through the amendment.

12. The trial Court will act on these observations as well.

Petition and Appeal from Order stand disposed of accordingly.

DAMA SESHADRI NAIDU, J.