IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 716 OF 2012

Mr. Lawrence Santan Pereira,
(since deceased) through legal representatives
1. (a) Mrs. Luizinha Pereira,
major of age,

2. Salvador Pereira,
major of age,
Both residents of
Mercurim, Agassim,
Tiswadi-Goa. .... Petitioners

V e r s u s

1. Assis Piedade Fernandes,
major,

2. Rozal Fernandes,
major,
Both residents of H. No.497,
St. Lawrence Mercurim,
Tiswadi, Goa.

3. The Village Panchayat,
of St. Lawrence,
through its Secretary,
having office at Agassaim,
Tiswadi, Goa

4. Fabrica de Igreja de Corlim,
Through its Parish Priest,
Corlim, Tiswadi, Goa. ..... Respondents.

Adv. Joaquim Godinho for the Applicants.

Adv. Ramachandra Gajanan Ramani for Respondent no. 1 & 2.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 17th February 2020.

Oral Judgment:

The respondent nos.1 and 2 filed Regular Civil Suit No.76/2009/C, before the Civil Judge, Junior Division, at Panaji. The respondents are the defendants and neighbours. The respondents' principle grievance in the suit was that the petitioners had been trying to construct a house without leaving proper setbacks, thus affecting their properties.

2. On 13.9.2011, the trial Court injuncted the petitioners from constructing on their property. Aggrieved, the petitioners, as the defendants, filed Misc, Civil Appeal No.113/2011 before the District Court, North Goa, Panaji, but could not succeed. Further aggrieved, the petitioners have filed this writ petition.

3. Pending this writ petition, the petitioners claim to have secured a declaration from the competent Court about their mundkarial rights and purchased the property, too. Besides that, they are said to have taken all necessary permissions to construct. Therefore, they have come up with this Misc. Civil Application, for the Court's leave to proceed with the construction.

4. Heard Shri J. Godinho, the learned counsel for petitioners; Shri R.G. Ramani, the learned counsel for respondent nos.1 and 2; and Shri Nagvekar, the learned counsel for respondent no.4.

5. When the trial Court passed the order injuncting the petitioners from raising the structures and later when the First Appellate Court confirmed that order, neither had the benefit of examining any orders in the

petitioners' favour. Admittedly, the petitioners secured a declaration, purchased the mundkarial property, and obtained the civic permissions for construction only pending litigation.

6. Under these circumstances, it serves the interest of justice if the matter is remanded to the trial Court, before which the petitioners as the defendants may place on record all the documents they have secured lis pendens and seek the appropriate relief. That done, the trial Court will examine the issue on the merits in the light of the new material the petitioners may have produced.

7. For that purpose, it is necessary that the impugned order, dt. 21.7.2012, needs to be set aside. And it is set aside. As a result, the matter stands remanded to the trial Court, where the interlocutory application for injunction also stands restored.

8. At any rate, as a matter of abundant caution, I observe that until the trial Court decides on the interlocutory application, the petitioners will not indulge in any construction.

9. At this juncture, the learned counsel for the forth respondent has submitted that the declaration the petitioners secured about the mundkarial rights and the subsequent purchase have already been questioned in Civil Suit No.43/2018, before the Court of Civil Judge, Senior Division, at Panaji. The learned counsel for respondent nos.1 and 2, that is the plaintiffs in the suit too, complain that the petitioners have secured the declaration and the sale deed without adding the respondents 1 and 2 as parties. So they are said

to have filed an interlocutory application before the Mamlatdar, but could not succeed. Later they filed a writ petition. That was dismissed on 28.7.2016. Nevertheless, this Court is said to have observed that the respondents could raise all pleas in their suit before the trial Court.

10. Under these circumstances, I further clarify that the trial Court will consider the plaintiff's interlocutory application in the light of the material now produced by the petitioners and the objections the respondents 1 and 2 may raise. And any adjudication in that application will be subject to the outcome of the suit filed by the fourth respondent. That is, the order in the interlocutory application, if any, will not affect the rights of the fourth respondent in his Civil Suit No.43/2018.

Once the matter is remanded, the trial Court will dispose of the interlocutory application expeditiously, preferably in six months.

DAMA SESHADRI NAIDU, J.

ap/-