

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA***APPEAL FROM ORDER NO.3 OF 2019***

TOWN COUNTRY REAL
ESTATES PVT. LTD.,

a company incorporated under
the Companies Act 1956,

having its Registered Office at
Lima Arcade, New Vaddem,

Vasco Da Gama Goa, 403 802,

represented herein by its Director,

Mr. Justiniano Da Costa,

son of late Proto da Costa, 65 years of age,

married, Indian National,

Resident of Borda, Margao Goa.

..... Appellant.

Versus

MR. LUCAS DOS REMEDIOS,

63 years of age,

Son of Avelino Remedios,

Residing at House No. 4/51-A,

Tabra Waddo, Saligao, Bardez Goa.

..... Respondents.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Sagar Rivankar,
Advocate for the Appellants.

Mr. Nigel Costa Frias, Advocate for the Respondents.

Coram : M.S. Sonak, J.

Dated : 16th October, 2020

JUDGMENT:-

Heard Mr. J.E. Coelho Pereira, the learned Senior Advocate

along with Mr. Sagar Rivankar for the Appellant and Mr. Nigel Costa Frias for the Respondent.

2. This Appeal challenges the order dated 10th October, 2018, made by the learned Trial Judge in Special Civil Suit No.28/2017/B declining temporary injunction to the Appellant-Plaintiff to restrain the Respondent-Defendant from interfering with the suit property or undertaking any construction activity therein.

3. On 25th June, 2019, this Court in Civil Application No.66/2019 by reference to the statement made on behalf of the Respondents on 26th April, 2019, made the following order :

“ This civil application is for seeking injunction in an Appeal challenging the order passed by the learned Trial Court, by which, the application for temporary injunction, filed by the petitioner, has been dismissed.

2. The record discloses that a statement was recorded on behalf of the respondent on 26.04.2019 to the effect that the respondent shall not undertake any construction in the suit property.

3. Mr. Costa Frias, the learned Counsel for the respondent submits that the respondent is willing to abide by the said statement, during the pendency of the Appeal.

4. The learned Counsel for the parties jointly request that the Appeal itself may be expedited and heard finally.

5. In such circumstances, the civil application is disposed of, subject to the statement on behalf of the respondent that the respondent shall not carry out any construction in the suit property, during the pendency of the Appeal.

6. Appeal From Order No. 3/2019 is hereby expedited, by consent of parties.”

4. This means that as on date, the position is that the Respondent has not undertaken any construction in the suit property. According to me, it is better that the issues are determined in the suit and, therefore it would be in the interest of justice if the suit itself is disposed of at an early date. In the meanwhile, the position that the Respondents do not undertake any construction in the suit property, can continue.

5. Mr. Costa Frias, however, submits that the Respondent wishes to put fencing only for the purposes of protection of the suit property. He submits that liberty may be granted to the Respondent to take out appropriate application before the Trial Court to seek such reliefs.

6. Liberty, as prayed for, is granted. However, it is made clear that such an application will have to be decided on its own merits and in accordance with law, particularly as the Appellant has objected to the Respondent putting up such a fencing. Such an application, if made, will however have to be decided within two months from the date on which the same is made

6. Besides, now that the Respondents are not to undertake any construction in the suit property, it would be appropriate that the

Special Civil Suit No. 28/2017/B is disposed of as expeditiously as possible and, in any case, within a period of one year from the date authenticated copy of the order is produced before the learned Trial Judge.

7. Both the parties to cooperate with the learned Trial Judge for expeditious disposal of the suit. In particular, the Appellants will not seek any unnecessary adjournments in the matter now that the Respondent is not to undertake any construction in the suit property pending the disposal of the suit.

8. In disposing of the suit, the learned Trial Judge need not be influenced by any of the observations made in the impugned order, as also by the circumstance that the Respondent is not to undertake any construction in the suit property, pending the suit. The suit will have to be decided on the basis of the evidence which the parties lead and on its own merits and in accordance with law. All contentions of all parties, are expressly left open.

9. The Appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

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

M.S. Sonak, J.