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**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.119 OF 2020.**

NEVES JESUS MENEZES AND 2 ORS. ... Petitioners.
Vs
JOSE WILLIAM MASCARENHAS
3 ORS. ... Respondents.

Mr. A. Bhobe, Advocate for the petitioners.

**CORAM: MANISH PITALE, J.
DATED: 1st December, 2021.**

ORAL ORDER.:

1. By this Writ Petition, the petitioners have challenged order dated 9.9.2019 passed by the Court of Adhoc District Judge-I South Goa, in Misc. Civil Appeal No.95 of 2007 whereby an appeal filed by the respondents(original defendants) has been allowed and order dated 28.9.2017 passed by the Court of Civil Judge, Junior Division(trial Court) allowing an application for temporary injunction has been set aside.

2. According to Mr. Bhobe, learned Counsel appearing for the petitioners (original plaintiffs), the trial Court had taken into consideration various aspects of the matter including parameters on which grant of temporary injunction has to be tested and found in favour of the petitioners. The appellate

Court ought not to have interfered, since the view of the trial Court was a reasonable and possible view in the facts and circumstances of the present case.

3. A perusal of the impugned judgment and order shows that the appellate Court has taken into consideration the mandatory requirements of pleadings in a case where the plaintiff approaches the Court on the basis of an easementary right. The appellate Court on analysing the pleadings on record has found that they are deficient and the pleadings do not meet mandatory requirements of law. It is not stated on behalf of the petitioners in the plaint that the way in question was being used as a matter of right for specific number of years by the petitioners and their predecessors. Apart from this, it is found that the suit is for simpliciter injunction, without any prayer for declaration as regards such an easementary right.

4. In view of the above, it cannot be said that judgment and order passed by the appellate Court is erroneous, because statutory requirements have been taken into consideration and prima facie it is found that the pleadings are deficient in the plaint itself. In such a situation, it is obvious that the trial Court could not have granted the temporary injunction in

favour of the petitioners and that the appellate court is justified in reversing the same.

5. In view of the above, the Writ Petition is dismissed

MANISH PITALE,J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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