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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.163 OF 2012

1. MR. SANTOSH BABU TUBKI,
son of late Babu Tubki,
Major of age, Married,
Businessman, Prop. of M/s
Mallikarjun Industry, having
its Office at Patnem,
Canacona- Goa.

2. Mrs. Sangeeta Santosh
Tubki, wife of Santosh
Tubki, Major of age, Both
residing at Patnem,
Canacona, Goa.

... Petitioners.

Versus

1. MR. RAGHOBHA GANBA SAWANT
son of late Ganba Sawant, of full age,
Agruculturist, resident of
House No. 652, Palolem,
Canacona, Goa, represented
by his Power of Attorney
holder, Mr. Anant Ganba
Sawant, son of Ganba Sawant,
resident of House No.191/A, Mastimol,
Canacona, Goa.

1(a) Smt. Urmila Raghoba Sawant
Wife of Late Raghoba Sawant
Age 72 years

1(b) Shri Manoj Raghoba Sawant
Son of Late Raghoba Sawant
Age 52 years

- 1(c) Smt. Sangita Ratish Sawant
Wife of Late Ratish Sawant
Age 41 years
- 1(d) Mr. Ved Ratish Sawant
Son of Late Ratish Sawant
Age 9 years
Represented through his mother
Ms. Sangita Ratish Sawant
All R/o H. No.96,
Sawantawada,
Palolem Canacona Goa
- 1(e) Smt. Savita alias Tejashree S. Naik
Dessai
D/o Late Raghoba Sawant
Age 55 years
R/o H. No. 87, Pansulem
Canacona Goa
- 1(f) Smt. Amita Rajendra Gad
Age 49 years D/o Late Raghoba Sawant
- 1(g) Rajendra Gad, Aged 53 years
Both R/o Sai Shraddha Building – II,
3rd Floor, flat no. 3,
Near Sai baba temple,
New Vaddem
Vasco da Gama Goa
- 1(h) Smt. Achal Suhas Gauns Dessai
Aged 45 years,
- 1(i) Suhas Gauns Dessai
Aged 50 years,
Both R/o H. No.323, Voyamol,
Xeldem Quepem Goa

2. Mr. Anant Ganba Sawant,
son of Ganba Sawant, r/o
House No. 191/A, Mastimol,
Canacona, Goa.

... Respondents.

Mr. T. Sequeira, Advocate *for the Petitioners*.

Mr. Cleofato Coutinho, Advocate *for Respondent No.2*.

Coram: M.S. SONAK, J.

Date: 5th August 2021.

ORAL JUDGMENT:

1. Heard Mr. T. Sequeira for the Petitioners and Mr. Cleofato Coutinho for Respondent No.2.
2. The Petitioners are the original defendants and Respondents No.1 and 2 are the original plaintiffs in RCS No. 108/2010 instituted in the Court of the Civil Judge Junior Division at Canacona, Goa.
3. The Trial Court in this case partly allowed the plaintiffs' application for temporary injunction in the following terms:-

"ORDER

The application for temporary injunction is partly allowed.

The defendants, their agents, servants, and/or any persons acting through them are restrained from interfering and obstructing the plaintiffs from using, enjoying and utilizing the 0.60 meters wide access kept towards eastern boundary of survey no.86/4 of village Canacona"

4. The plaintiffs were however aggrieved by the Trial Court's order dated 20.07.2011 and therefore, instituted Miscellaneous Civil Appeal

No.84/2011 before the First Appellate Court. This was allowed by the First Appellate Court partly in the following terms:-

“ORDER

The Misc. Civil Appeal is partly allowed.

The Order dated 20.07.2011, passed by the Civil Judge, Junior Division, Canacona, in Regular Civil Suit No. 108/2010, stands modified to the following effect;

That the plaintiffs are allowed to shift the barbed wire fencing of the defendants on the eastern boundary of survey No. 86/4, in the portion where the access of 0.60 metres width is presently available, as shown in the sketch of field surveyor of the office of Mamlatdar, annexed to the report dated 21.05.2008, to the extent of 2.50 metres width, at their own cost and under prior intimation to the defendants.

Further, the defendants, their agents, servants and/or any persons acting through them are temporarily restrained from interfering and obstructing the plaintiffs from using, enjoying and utilizing the said access of 2.50 metres width till the disposal of the suit.

No order as to costs.”

5. There is no dispute that the order dated 16.11.2011 made by the First Appellate Court was stayed by this Court and such interim order continues till date. Now that the interim order has continued for this long, interest of justice will be better served if this appeal is disposed of by directing the Trial Court to dispose of that Regular Civil Suit No.108/2010 as expeditiously as possible and in any case within six months from today. In the meanwhile, the interim order made by this Court can operate.

6. At this point of time, no useful purpose will be served in examining this appeal on merits. This is because even after such examination, this Court will only be in a position to decide the interim position and not the final position. Since the suit was instituted in the year 2010, it is only appropriate that the suit itself is disposed of on its own merits and in accordance with law as expeditiously as possible. In disposing of the suit, the Trial Court need not be influenced by the observations in the interim orders or the continuance of interim relief by this Court pending the disposal of the suit.

7. Accordingly, this petition is disposed of. The impugned order dated 16.11.2011 made by the First Appellate Court will not be implemented until the disposal of the civil suit. The civil suit is directed to be disposed of as expeditiously as possible and in any case within six months from today. The parties and their Advocate to cooperate with the learned Trial Court for the disposal of the suit. The Trial Court should not be influenced by any observations in the impugned orders or for that matter the present order. All contentions of all parties are expressly left open.

8. The rule is made partly absolute in the aforesaid terms. There shall be no order as to costs.

9. All concerned to act on authenticated copy of this order.

M.S. SONAK, J.