

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.22/2021

SHRI DR. G.R. SHARMA, 210, Second Floor, Nizari Bhawan, Panaji, Goa-403001, Age 65.

... APPELLANT

Versus

1. MR. R. K. SHARMA, Allottee of plot no.232, Phase - II, Defence Colony, Alto Porvorim, Bardez, Goa. Since deceased by his legal heirs,

A) Mrs. Aruna Sharma Alias Neelam Sharma, Wife of late R.K. Sharma,

B) Rahul R. Sharma, Son of late R.K. Sharma,

C) Yogesh R. Sharma, Son of late R.K. Sharma,

All residents of Mahendra Enclave, Opposite Model Town III, Delhi 110033

OR Alternatively at

R.K. Sharma, Addl. C.P. Delhi Armed Police, New Civil Lines, Delhi. through Shri A.J. Patil, Power of Attorney Holder, Having office at Opposite Hotel Manoshanti, Panaji, Goa.

2. Mr. Sohan Singh, Constable, Delhi Armed Police, presently At Plot

No.232, Phase - II, Defence Colony,
Alto Porvorim, Bardez - Goa.

3. Mr. Dharminder, Constable, Delhi
Armed Police, presently At Plot
No.232, Phase - II, Defence Colony,
Alto Porvorim, Bardez - Goa. 4. Mrs.
Aruna Sharma alias Neelam Sharma,
Wife of Mr. R.K. Sharma, Plot No.232,
Phase-II, Defence Colony, Alto
Porvorim, Bardez-Goa.

OR

In the alternative at

4. Mrs. Aruna Sharma alias Neelam
Sharma, Wife of Mr. R.K. Sharma, Add.
Commissioner of Police Delhi Armed
Police, New Civil Line, Delhi through
the Commissioner of Police, Police
Head Quarters Building, Opposite
Income Tax Bhawan, New Delhi
110001.

... RESPONDENTS

Mr. Sagar Dhargalkar, Advocate *for the Appellants*.

CORAM: M. S. SONAK, J.

DATED: 7th October 2022

ORAL JUDGMENT:

1. Heard Mr. Dhargalkar for the appellant.
2. This Second Appeal questions the impugned Judgment and Decree dated 12.05.2021 made by the First Appellate Court to

the extent the same denies to the appellant the relief of "injunction" after having granted the relief of "declaration".

3. Mr. Dhargalkar, on instructions makes it clear that the appellant is not pressing for the relief of recovery of any money from the respondent-defendant.

4. The Trial Court in this case, had dismissed the appellant's suit seeking declaration that marble and timber belong to him and not to the defendant. The appellant had also applied for the relief of injunction and recovery of some amounts.

5. The First Appellate Court has partly allowed the appellant's appeal and granted a declaration that the marble and timber belongs to the appellant-plaintiff. The First Appellate Court has relied upon some unsigned compromise terms. The respondents have not appealed against the decree made by the First Appellate Court. Mr. Dhargalkar now says that since declaration is granted, injunction should have followed.

6. In this matter, it is the appellant's own case that the marble has been used as a flooring for his apartment. Same is the position with the timber. Yet, the appellant claims that there is an apprehension that the respondent might interfere with such

marble or timber. In my judgment, there is no basis for such an apprehension. Therefore, this Second Appeal raises no substantial question of law that is required to be decided.

7. However, in future, if there is any real apprehension, then, it will always be open to the appellant to institute a suit seeking injunction based upon such real cause of action, should the same indeed arise in future.

8. Therefore, after clarifying the aforesaid, this appeal is hereby dismissed. There shall be no order for costs.

M. S. SONAK, J.