

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.18 OF 2020

SARASWATI BASANT
ENTERPRISES, A PROP CONCERN,
ARJUN PRASAD AND ANR. ... Appellants

Versus

RAM SAGAR PRASAD AND ANR. ... Respondents

Mr Rohit Bras De Sa, Advocate for the Appellants.

Mr Vledson Braganza and Mr Sagar Rivankar, Advocates for the Respondents.

CORAM: M. S. SONAK, J.

DATED : 30th September 2022

P.C.:

1. Heard Mr Rohit Bras De Sa, learned Counsel for the Appellants and Mr V. Braganza, who appears along with Mr Sagar Rivankar for the Respondents.

2. This Second Appeal questions the concurrent decrees made by the trial Court and the Appellate Court ordering the Appellants' eviction from several premises described in the plaint.

3. On 15.12.2021, this Court, speaking through the Hon'ble Justice Manish Pitale, made the following order:

" 1. Heard Mr. R. Bras Desa, learned Counsel appearing for the appellants.

2. In this appeal, the appellant no.2 and respondent no.1 are brothers. The appellants are facing two concurrent orders passed against them.

3. The material on record indicates that the respondents had filed a suit for permanent injunction, eviction and recovery of money and mense profit against the appellants. It was claimed that suit was filed for eviction of the appellants from a room referred to as suit premises and also eviction from additional premises referred to as suit additional premises. It was the case of the respondents that the appellants were not only liable to be evicted from the suit room premises for the reason that the appellant no.2 had started business in the suit room premises without the consent of the respondents, but further that the appellants had allegedly forcibly encroached upon the premises referred to as suit additional premises.

4. It was the case of the appellants that in so far as the suit additional premises are concerned pleadings are sketchy and the Courts below have not appreciated the pleadings and evidence on record in the correct perspective while passing the decree against the appellants for eviction not only from suit room premises but also from suit additional premises.

5. This Court has perused the concurrent judgments. A perusal of the material on record shows that the findings rendered by two Courts below concurrently on the question of eviction from the suit room premises on the ground of appellants starting business in the said premises without the consent of respondents are based on cogent appreciation of the material on record and, hence, do not deserve any interference. At the same time decree of eviction from the suit additional premises may require examination.

6. It is pointed out by the learned Counsel for the appellants that Execution Proceedings are being pressed by the

respondents wherein an application has been filed for the arrest and detention of the appellant no. 2.

7. A statement is made by the learned Counsel for the appellants, on instructions, from the appellant no. 2 present in Court today that the appellants shall vacate the suit room premises within a period of four weeks from today. Statement is recorded as an undertaking to this Court.

8. On the aspect of the matter concerning said additional premises, issue notice returnable on 3.2.2022 on the following substantial question of law.

Whether the decree passed in favour of the respondents, directing the appellants to handover vacant possession of the suit additional premises and confirmed by the appellate Court by dismissal of the appeal, is sustainable, in view of the nature of the pleadings on record and evidence led by the rival parties, in the backdrop of the contentions of the appellants that the description of the suit additional premises is not precised and the pleadings are deficient.

10. In view of the substantial question of law framed herein above, limited to the extent to the suit additional premises, there shall be ad-interim stay of execution of the decree limited to dispossession from the suit additional premises till the next date of listing."

4. On 08.03.2022, Mr Braganza appeared in the matter and pointed out to the Court presided over by the Hon'ble Justice Manish Pitale that only unamended plaint was before the Court when it made its order dated 15.12.2021. Mr Braganza handed over a copy of the amended plaint. Based upon the amended plaint, Mr Braganza

submitted that the substantial question of law framed by the order dated 15.12.2021 may not even arise in the facts of the present case. The order made on 08.03.2022 records all this and further records that since the copy of the amended plaint was handed over to Mr De Sa on the said date itself, a short adjournment was sought by him and the same was granted. The matter was posted for further consideration on 21.03.2022.

5. Mr De Sa, learned Counsel for the Appellants, submits that the description of "*room and shed*" is unclear even in the amended plaint. He presents that neither there is any survey number of the property where this room and the shed are said to be situated stated, nor any house number of this room and shed provided even in the amended pleadings. Mr De Sa pointed out that para 6 of the unamended plaint ends with a full stop. The amendment adds to para 6 the following words '*and room and shed*'. He, however, points out that the original full stop in the unamended plaint precedes the above words and continues. He submits that this again introduces uncertainty, imprecision and vagueness. He presents, therefore, that there is no accurate description of either additional premises or room and shed. He points out that there is no sketch, even though the claim is of encroachment. He submits that in the absence of an accurate description, the Appellants were prejudiced in their defence. He offers that a vague and imprecision decree can neither be made nor executed.

6. For all these reasons, Mr De Sa submits that even upon perusal of the amended plaint, the substantial question of law framed in para 8 of this Court's order dated 15.12.2021 arises, and the appeal deserves to be allowed or, in any case, admitted on this substantial question of law.

7. Mr V. Braganza countered Mr De Sa's submissions. He pointed out that the substantial question of law framed in para 8 of the order dated 15.12.2021 refers to "*suit additional premises*" and not room and shed. He submits that no issue was raised about the room and shed, and the only issue raised was of the additional premises. He presents that the additional premises have been very well described in para 10 of the plaint even before its amendment. He points out that even the number of the said structure has been specified in para 10. He, therefore, submits that no substantial question of law arises in this appeal.

8. Mr Braganza further submits that even the room and shed have been sufficiently described in para 6, 10(A), 12(A), and 15(A) of the amended plaint. Finally, he submits that the concurrent decree cannot be frustrated by raising such a hyper-technical plea even otherwise lacking in merits. Based on all this, Mr Braganza submitted that this appeal may be dismissed.

9. The rival contentions now fall for my determination.

10. First, the substantial question of law referred to in para 8 of the order dated 15.12.2021 was formulated by referring to the unamended plaint. Admittedly, leave had already been granted to amend the plaint, and the amended plaint was not before this Court when the substantial question of law was formulated. The question was proposed at the stage when the Respondents had not appeared.

11. Secondly, the substantial question of law as formulated refers to the description "*suit additional premises*" and alleged imprecision in its description. There is no reference to any room or shed in the substantial question of law as formulated. Therefore, the context of the question framed, is different.

12. Now even the unamended plaint, in its para 10, sufficiently describes the suit additional premises. For this purpose, para 10 of the unamended plaint is transcribed below for the convenience of reference.

"10. The Plaintiff states that the Defendant has filed a civil suit no.25/2014 against the Plaintiff no.1 before District Judge 2, South Goa, Margao the Defendant has pleaded that Plaintiff has allowed the Defendant to occupy a structure bearing no. 255/1 and that the structure has been utilized by the Defendant. The said structure hereinafter referred as the 'suit additional premises'.

13. From those above, it is quite clear that the structure number 255/1 has been provided. Besides, there is a reference to Defendant's Civil Suit No.25/2014, which gives an additional clue about the suit

additional premises. Therefore, there is neither imprecision nor vagueness about the description of the suit additional premises. No case of any prejudice, is therefore, established.

14. Mr De Sa, however, now submits that the imprecision and vagueness is in the context of the said room and shed. The reference to the room and shed was in the context of the amended plaint. Therefore, this alleged imprecision or vagueness was not contemplation when the substantial question of law at para 8 of the order dated 15.12.2021 was formulated.

15. Be that as it may, even in so far as the room and shed is concerned, there is no such vagueness or imprecision as alleged. In the first place, the expression "*and room and shed*" has been added at the end of existing para 6 of the plaint. True, the author of the amendment failed to seek an amendment to delete the full stop. However, such an omission or typo cannot enable the Appellants to gain any significant mileage. The pleadings have to be read in their entirety and contextually. Thus, read and construed, it is clear that the room and shed are in "*said property no.1*". This "*said property no.1*" had been exhaustively described in para 2 of the plaint.

16. Para 2 of the plaint, even before its amendment, reads as follows:-

"2. The plaintiff states that there exist a property known as "HORTA" "DEULBHAT" also known as "MUDDER" bearing survey no.214 sub division 23 and 24 of Quellossim

village admeasuring 925 sq. mts, Taluka Mormugao, District South Goa, State of Goa registered under no.22746 in the land Registration office of Salcete, Margao at page 120 V of Book B 58 new and the same is $\frac{1}{4}$ part of the whole property registered under Matriz no.185 in the Taluka Revenue office of Mormugao Taluka, situated within the jurisdiction of Cortalim Quelossim Village Panchayat and same is bounded by

On the North: By part of the said property surveyed under survey no.214/22.

On the south: By part of the said property surveyed under survey no.214/25.

On the East: By public Road Cortalim leading to Loutolim.

On the West: By part of the property surveyed under surveyed under Survey no.214/1.

The property shall herein after be referred to as the "said property no.1".

- 17.** As if the above description was insufficient, para 10(A) has been introduced in the plaint after seeking leave to amend. This para 10(A) further describes the suit room and the shed in the following manner.

"10(A). The Plaintiff states the Defendants has also taken the illegal possession of the structure consist of 2 rooms touching the southern boundary of said property and the shed which is situated behind suit premises. The room and shed hereinafter shall be referred as the 'Suit room and shed'."

- 18.** Accordingly, for all the above reasons, no substantial question of law arises in this appeal, including the substantial question of law

earlier framed based on the unamended plaint in para 8 of the order dated 15.12.2021.

19. As a result, this appeal is liable to be dismissed and is hereby dismissed. However, there shall be no order for costs. Accordingly, the interim order granted earlier is hereby vacated.

20. The Civil Applications, if any, do not survive with the disposal of the appeal. Accordingly, even such Civil Applications are disposed of.

M. S. SONAK, J.

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