

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.343 OF 2021

1. Smt. Malati @ Yeshi Atchut Naik,
Widow of late Atchut Naik,
Aged about 65 years, household.

2. Shri. Shivanand Atchut Naik
Son of late Atchut Naik,
Age about 54 years, business,

3. Shri Kashinath Atchut Naik,
Son of late Atchut Naik,
Age about 51 years, service,

4. Shri. Tilu @Sunil Atchut Naik,
Son of late Atchut Naik,
Age about 44 years, service,

5. Shri Sudhir Atchut Naik,
Son of late Atchut Naik,
Age about 36 years, service,

All residents of H.No.304,
Fondchembhat, Thaikanem,
Volvoi, Ponda-Goa.

... Petitioners

V/s

1. Smt. Pushpa Suryakant Naik,
Wife of Shri. Suryakant Naik,
Age 41 years, housewife,

2. Shri Suryakant Mahadev Naik,
Son of late Mahadev Naik,
Age about 49 years, Carpenter,

3. Smt. Parwati Mahadev Naik,

Wife of Shri. Suryakant Naik,
Age 79 years, housewife,

4. Shri Dilip Mahadev Naik,
Son of late Mahadev Naik,
Age about 54years, Service,
All residents of H.No. 208 & 209,
Fondchembhat, Thaikanem,
Volvoi, Ponda-Goa.

5. Village Panchayat of Volvoi,
Through its Secretary/Sarpanch,
Having its Office at Volvoi, Ponda, GoaRespondents

Mr. Dharmanand R. Verekar for the Petitioner,

Mr. Arjun Naik for the Respondent nos. 1 to 4.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 02nd November, 2023

ORAL JUDGMENT

1. Heard Mr. Verekar for the Petitioner , Mr. Arjun Naik for the Respondent nos. 1 to 4.

2. Rule is made returnable forthwith.

3. Heard the learned Counsels with consent.

4. Present petition is filed challenging the impugned order passed by the Learned Civil Court dated 02.07.2019 and confirmed by the First Appellate Court dated 31.01.2020.

5. Learned Trial Court allowed Temporary Injunction application filed by Respondent No.4, restraining the Defendant nos.1 to

5/Petitioners herein from carrying out any construction/extension of the existing house in survey no. 33/5 of Village Volvoi as shown at point A-2 in the plan drawn by Surveyor Mr. Shiva Naik.

6. Appeal filed by the Petitioners challenging such Order of the Trial Court was rejected.

7. Mr. Vernekar appearing for the Respondent strongly contended that first of all, the Plaintiffs failed to prove their title over the suit property and the documents relied upon by them are not sufficient enough to establish title. He submits that old cadastral survey shows that only quit rent was paid in the name of ancestors of Plaintiff. He submits that there are other houses in the suit property and one of such house belongs to Defendant nos. 1 to 5. He further submits that some portion of old house collapsed and therefore Defendant nos. 1 to 5 started re-constructing it when the suit was filed and the Defendants have been restrained from carrying out further construction. Mr. Verekar candidly accepted that Defendant nos. 1 to 5 did not obtain any permission from the Village Panchayat or other authorities but claimed that they are entitled to carry out such construction to protect their house, whereas Plaintiffs who are having no right cannot file a suit and restrain the Defendants from enjoying the said house. He submits that even if the portion of the house is constructed pending the suit, no prejudice will be caused to the Plaintiffs and if Plaintiffs succeeds finally, such portion can be

demolished.

8. Per Contra, Mr. Arjun Naik for the Respondents would submit that Defendant nos.1 to 5 are not having any right in the said suit property and they started reconstruction of the house without obtaining any permission from the authorities. He claimed that this is clearly in violation of the Building Bye-laws and also the proprietary rights of the Plaintiffs.

9. Rival contentions fall for determination.

10. Perusal of the impugned order and more specifically Civil Court Order clearly goes to show that the learned Court has considered that the Plaintiffs are prima facie considered as occupants of both the survey holdings, whereas there is no mention of the Defendant either in occupant's column or other right column. The learned Civil Court further observed that the construction started by Defendants without obtaining any permission from the Village Panchayat or other authorities. Accordingly, both the Courts below found that there is need to restrain Respondent no.1 to 5 from carrying out further construction till the disposal of the suit. Mr. Verekar placed reliance in the case of **Ramesh G. Kandolkar and others Versus Nandalak Khemka and Another** in Appeal from Order 43/2016 decided by this Court on 10.07.2017. A perusal of the facts of the said matter would clearly go to show that suit was filed for

enforcement of the Bye-laws in relation to the set back which is not at all the case in the present matter. Thus observation in the said decisions are clearly distinguishable and not helpful to the Petitioner.

11. The Plaintiff in the suit specifically averred that they are the Co-owners of the suit property and produced relevant documents including Form No. I and XIV wherein name of ancestors of Plaintiff is figuring in occupant's Column. Accordingly, the learned Trial Court as well as First Appellate Court rightly considered the presumption under section 105 of Land Revenue Code. As against this Defendant no. 1 to 5 did not produce any document even to show their right over the said house. It is the contention of the Defendants that some portion of the house collapsed and therefore they started repairs. The photographs produced on record and even shown today by learned Counsel Shri Naik would clearly go to show that it is not the repairs but prima facie reconstruction. Admittedly, Defendants failed to obtain any permission from the Village Panchayat to carry out reconstruction. Since the name of the Plaintiffs are figuring in the survey records, they are entitled to protect their proprietary rights. A perusal of orders passed by the Courts would clearly go to show that findings therein are based on the material placed before it and by observing the settled proposition of law with regard to grant or refusal of Temporary Injunction. No material has been produced to show that such findings are against the

settled proposition of law in order to interfere in the writ jurisdiction.

12. Accordingly, no case is made out for interference in the Impugned Order.

13. Writ Petitions stand dismissed. |Rule stands discharged. Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.