

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 393 OF 2021

RAMAKANT LADU GAONKAR ... PETITIONER

Versus

PREMANAND GOVIND GAONKAR

& ANOTHER ... RESPONDENTS

Mr. Ashwin D. Bhobe with Ms. Ramona Prazares, Advocates
for the Petitioner.

Mr. R.G. Ramani, Senior Advocate with Mr. Pranav Shenvi
Kakodkar, Advocate for Respondent No. 1.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 12th OCTOBER 2023

P.C.

1. Heard learned Counsel Mr. Bhobe for the Petitioner and
learned Senior Counsel Mr. Ramani, who appears with Mr.
Kakodkar for Respondent No. 1.

2. The challenge in the present Petition is to the order passed
by the first Appellate Court in Miscellaneous Civil Appeal No. 88

of 2019 dated 18.12.2019. By this impugned order, the learned first Appellate Court reversed the order dated 17.10.2019 passed by the Trial Court in Regular Civil Suit No. 87 of 2017 under Order 39 Rule 4 of CPC. The learned Civil Court modified its earlier order passed under Order 39 Rules 1 and 2 of CPC by allowing the present Petitioner to carry out construction as per the approved plan.

3. Learned Counsel Mr. Bhobe submitted that after the order was passed by the learned Trial Court modifying its injunction order and till the disposal of Miscellaneous Civil Appeal No. 88 of 2019 by the impugned order dated 18.12.2019, the Petitioner completed the construction/extension in terms of the approved plan.

4. Mr. Bhobe, now, on instructions from the Petitioner, who is present in the Court, submits that recently the Petitioner has also received the occupancy certificate from the competent Authority i.e. Village Panchayat of Bethoda in connection with the said construction. He submits that the Petitioner is already occupying such premises.

5. Having considered the above submissions, it is clear that the purpose for which injunction order was modified by the learned Civil Court is already over. The first Appellate Court, though reversed the order of the Trial Court, there is no mention of completion of such construction activities during the pendency of the Appeal.

6. The learned Senior Counsel Mr. Ramani submits that Plaintiff No. 1/ Respondent No. 1 will have the option to file the amendment Application thereby challenging the extension/ construction carried out during the above period i.e. after the modification order was passed by the Trial Court and the dismissal of Miscellaneous Civil Appeal No. 88 of 2019. He further submits that if any contempt Application is filed, the same shall be decided on its own merits.

7. Mr. Ramani submits that the Plaintiff No. 1/ Respondent No. 1 is disputing about the occupation of the Petitioner and also the completion of construction/ extension during the intervening period i.e. after the modification order and before deciding

Miscellaneous Civil Appeal No. 88 of 2019. Such an aspect is kept open to be decided by the learned Trial Court.

8. Having said so and on the submission that the construction/ extension is already complete and that too when there were no interim restrictions from the first Appellate Court, nothing survives in the present Petition. However, the parties are at liberty to take necessary steps by way of amendment to challenge such construction/ extension.

9. The Trial Court shall decide such Application, filed if any, in accordance with law and by giving opportunity to the respective parties.

10. The present Petition, therefore, stands disposed of in the above terms.

BHARAT P. DESHPANDE, J.

VAIGANKAR
ESHA SAINATH

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