

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.240/2022

BABURAO PANDURANG DHOND
AND ANR.

... PETITIONERS

Versus

SHRI. DEV VETAL MAHARUDRA
DEVASTHAN MULGAO THR. THE
PRESIDENT AND ANR.

... RESPONDENTS

Mr Pravin Faldessai with Ms Prajali Tari, Advocates *for the
Petitioners.*

Mr Ashwin Bhobe with Ms S. Badruddin, Advocates *for
Respondent No.1.*

CORAM: M. S. SONAK, J.

DATED: 18th August 2023

P.C.:

1. Mr Pravin Faldessai for the petitioners and Mr Ashwin Bhobe for respondent no.1.

2. The challenge in this petition is to the Judgment and Order dated 14.10.2021, by which the Appeal Court has reversed the Trial Court's Order dated 21.01.2020, by which an injunction was granted favouring the petitioners and restraining the respondents from interfering with the suit property.

3. From the perusal of the impugned Judgment and Order, it is seen that the Appeal Court has not applied the correct principles while interfering with the Trial Court's order. The Appeal Court failed to appreciate that petitioner no.1's father's name is reflected in the survey records, and even the respondents had admitted that they had permitted the petitioner no.1/his father to stay in the suit house in the suit property. The Appeal Court should also not have reversed the Trial Court's order based upon some confusion about respondent no.3's correct name.

4. Based on the material on record, the Trial Court was right in holding that the petitioners had made out a *prima facie* case. However, regards the balance of convenience, irreparable loss and prejudice, the petitioners are not on a strong wicket.

5. The record bears out that the suit house in the suit property is already demolished. Besides, the material on record *prima facie* shows that the petitioners stay at Sancoale. Besides, even the respondents do not propose to undertake any construction on the suit property. Considering all these aspects, the balance of convenience does not favour the grant of any injunction. Similarly, it is not as if some irreparable loss and prejudice will occasion the petitioners if the injunction is refused.

6. Thus, even though the petitioner has made out a *prima facie* case considering that the other two parameters do not favour the petitioner, it would not be appropriate to grant the petitioner any temporary injunction. However, the Appeal Court's direction

to the petitioner to correct the name of respondent No. 2 herein is set aside since it is for the petitioner to decide on such matters. If, ultimately, it is found that there is a misdescription, then the petitioner will have to face the consequences.

7. The orders made by the Trial Court, Appeal Court or, for that matter, this Court are not relevant while deciding the Suit on merits. Therefore, all observations in such interim orders, including the present order, are only *prima facie*, it is clarified that such observations need not influence the final disposal of the Suit.

8. Accordingly, the Trial Court is now directed to dispose of the Regular Civil Suit No.55/2017/C as expeditiously as possible and in any case within one year from the date the parties file an authenticated copy of this Order, on its own merits and in accord with the law. Any observations should not influence the Trial Court in the interim orders made by the Trial Court, Appeal Court and this Court. The Suit must be decided on its own merits having regard to the evidence the parties present before the Court and the law as applicable.

9. The appeal is disposed of in the above terms.

10. There shall be no order for costs.

M. S. SONAK, J.

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