

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 183 OF 2019

IN

FIRST APPEAL NO. 125 OF 2019

PRABHAVTI PUNDALIK

USKAIKAR AND ANR.

... Applicants

Versus

JAIDEV YESHWANT NAIK

AND ANR.

... Respondents

Ms. S. Kenny, Advocate for the Applicants.

Mr. J. Godinho, Advocate for Respondent No.1.

Mr. A. D. Bhobe, Advocate for Respondent No.3.

CORAM: M. S. SONAK, J.

DATED : 31st MARCH 2023

P.C.:

1. In the Civil Application No. 183 of 2019, the Appellants seek a stay of the impugned judgment and decree dated 31.12.2018.
2. No blanket stay as prayed for can be granted. The operative portion of the impugned judgment and decree dated 31.12.2018 reads as follows:-

“The suit shall stand partly decreed with cost.

The defendants, their agents and servants are restrained by way of permanent injunction from

doing any further construction in the set back area required to be maintained in accordance with law.

For mandatory injunction directing the defendants to remove and demolish the construction of basement and veranda and staircase as per the plan as per law which is coming in the road widening and set back area.

Decree to be drawn up accordingly.”

3. If the decree restraining the Appellants from doing any construction in the setback area is stayed, then, the Appellants might proceed with further construction in the setback area. That cannot be allowed. Therefore, there shall be no stay in so far as the permanent injunction restraining the Appellants from doing further construction in the setback area required to be maintained in accordance with law. The Appellants will have to abide by this portion of the impugned judgment and decree.

4. However, there shall be a stay on the decree for mandatory injunction directing the defendants to remove and demolish the construction of basement and veranda and staircase as per the plan which is coming in the road widening and set back area. If this stay is not granted then perhaps the Appellants would have to demolish the basement, veranda and staircase. Accordingly, this portion of the impugned judgment and decree is stayed.

5. Further, it is directed that the Appellants shall also maintain the status quo and not to carry out any further construction without seeking leave of this Court.

6. The Civil Application No.183 of 2019 is disposed of in the above terms.

M. S. SONAK, J.

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