

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.570 OF 2016

1. Shri Mahadev Ramchandra Vaze,
son of Ramchandra Vaze,
58 years old, married, businessman,

2. Smt. Madhavi Mahadev Vaze
(since deceased)
wife of Mahadev Vaze, 52 years old,
housewife,

2(a) Mr. Pawan Mahadev Vaze,
son of Mr. Mahadev Vaze,
of major age, Businessman.

2(b) Mr. Shubham Mahadev Vaze,
son of Mr. Mahadev Vaze,
of major age, Businessman.

Both residing at Sonarbhat Latambarcem,
Bicholim, Goa.

3. Shri Subha Ramchandra Vaze,
(since deceased)
son of Ramchandra Gaze,
64 years old, unmarried, businessman,

4. Shri Datta Ramchandra Vaze,
son of Ramchandra Vaze, 62 years old,
unmarried, businessman, All Indian
Nationals, residing at House No. 98
Sonarbhat, Latambarcem, Bicholim Goa.

....Petitioners

Versus

1. Shri Sagun Sajro Gaddi, alias Ghadi,

son of late Sazro Ghadi (Since deceased)

1(a) Mr. Gurudas Sagun Gaddi,
son of late Shri Sagun Sajro Gaddi alias
Ghadi, 50 years of age, married,
serviceman.

1(b) Smt. Gauri Gurudas Gaddi,
wife of Mr. Gurudas Sagun Gaddi,
45 years old, housewife.

1(c) Mr. Shankar Sagun Gaddi,
son of late Sagun Sajro Gaddi alias Ghadi,
48 years old, married, businessman.

1(d) Smt. Shravani Shankar Gaddi,
wife of Shri Shankar Sagun Gaddi,
39 years old, housewife.

1(e) Shri Mahadev Sagun Gaddi,
son of late Sagun Sajro Gaddi alias Ghadi,
46 years old, married, businessman.

1(f) Smt. Mansi Mahadev Gaddi,
wife of Shri Mahadev Sagun Gaddi,
32 years old, housewife.

All the above are residing at Sonarbhat,
Latamarcem, Bicholim, Goa.

2. Smt. Savitri Sagun Gaddi, alias Ghadi,
wife of Sagun Gaddi;

3. Smt. Parvati Sajro Gaddi, alias Ghadi,
widow of late Sazro Gaddi
(deleted vide order dtd. 30.04.2011)

4. Shri Anant Sajro Gaddi
(since deceased)

alias Ghadi, son of late Sazro Ghadi

4(a) Smt. Chandrakala Chandrakant
Mauskar, daughter of late Anant Sajro
Gaddi alias Ghadi, 48 years old, married,
housewife.

4(b) Shri Chandrakant Raghlo Mauskar,
son-in-law of late Anant Sajro Gaddi alias
Ghadi, 55 years old, labourer.

Both residing at Harvalem, Sankhali,
Goa.

4(c) Smt. Sunita Nagesh Gaokar,
daughter of late Anant Sajro Gaddi alias
Ghadi, 46 years old, housewife.

4(d) Shri Nagesh Sagun Gaokar,
son-in-law of late Anant Sajro Gaddi alias
Ghadi, 48 years old, Agriculturist.

Both residing at Velguem, Bicholim, Goa.

4(e) Smt. Mangal Digambar Gaokar,
daughter of late Anant Sajro Gaddi alias
Ghadi, 42 years old, housewife.

4(f) Shri Digambar Shiva Gaonkar,
son-in-law of late Anant Sajro Gaddi alias
Ghadi, 51 years old, Serviceman.

Both residing at Maulinguem, Bicholim
Goa.

5. Shri Datta Sajro Gaddi alias Ghadi,
son of late Sazro Ghadi,

6. Smt. Sakuntala Datta Gaddi alias

Ghadi, all major of age
and resident of Sonarbhat,
Latambarcem, Bicholim, Goa.

....Respondents

Mr Vilas P. Thali, Advocate for the Petitioners.

**Mr A.D. Bhobe with Ms V. Pokre, Advocates for Respondent
no.5.**

CORAM: M. S. SONAK, J.

DATE : 6th APRIL 2023

ORAL JUDGMENT :

1. Heard Mr Thali for the petitioners and Mr Bhobe for respondent No. 5.

2. This petition is directed against the judgment and order dated 04.12.2005 by the District Court (Appeal Court) reversing the Trial Court's order dated 05.07.2012. The Trial Court, by the order dated 05.07.2012, had issued a mandatory injunction at the temporary stage directing the respondents to demolish/remove the constructions put up by them allegedly during the pendency of the suit. The constructions are of the residential houses of the respondents.

3. Mr Thali, the learned Counsel for the petitioners, clarifies that the challenge is only to the extent of reversal of the order of mandatory injunction. He points out that the Trial Court had restrained the respondents from undertaking any further construction

in the suit property. This portion of the Trial Court's order has been upheld by the Appeal Court and against which the petitioners have no grievance.

4. The record, in this case, shows that the respondents have raised the plea of agricultural tenancy, and this issue is already referred to the Mamlatdar for determination. The record also indicates that the petitioners-plaintiffs had applied for a temporary injunction against the respondents, which the Trial Court dismissed, and the Appeal Court confirmed such dismissal. Undeterred, the petitioners instituted yet another application for temporary injunction alleging fresh violations. Even this application was rejected by the Trial Court, and the Appeal Court upheld such dismissal.

5. The petitioners, alleging even further constructions during the pendency of the suit and the reference before the Mamlatdar, filed an application seeking *inter alia* restraint and mandatory injunction. The Trial Court, this time, allowed the application, restrained further constructions and ordered the demolition of the constructions allegedly undertaken during the pendency of the suit.

6. The Appeal Court, by the impugned order, has reversed the Trial Court's order of mandatory injunction. The detailed reasoning of the Appeal Court is found in paragraph 13. From the perusal of such

detailed reasoning, the same cannot be stigmatised as arbitrary or perverse.

7. The Appeal Court has noted that the Trial Court's order of mandatory injunction relied almost entirely on photographs. The Appeal Court, however, correctly pointed out that no pictures of the earlier status of the houses were available on record to make a proper comparison. The Appeal Court also considered the impact of the dismissal of the previous application on the ground that the petitioners had failed to make out a *prima facie* case.

8. The Appeal Court also noted that the petitioners sought relief of temporary mandatory injunction without even bothering to seek such relief by amending the plaint. To that extent, the interim relief sought travelled beyond the main reliefs in the plaint.

9. The Appeal Court has also adverted to the provisions of the Agricultural Tenancy Act and the fact that the houses were being used for residential purposes. Mr Bhobe, the learned Counsel for the respondents, maintains that the houses are used only for residential purposes, not commercial ones.

10. In the case of *Dorab Cawasji Warden V/s. Cooni Sorab Warden & Ors.*¹, the Hon'ble Supreme Court has held that for the

1 AIR 1990 SC 867

grant of the mandatory injunction at the temporary stage, a party must make out a higher standard of *prima facie* case than is required for a prohibition. Further, the party must also make out a case that the grant of such injunction is necessary to prevent severe or irreparable injury, which can either not be restored once the decree is made or be compensated in terms of money. However, the Appeal Court has correctly held that the petitioners made no case of such a higher standard in this case.

11. Mr Thali referred to the pleadings in the written statement, replies to the several injunction applications filed by the petitioners and, based thereon, contended that there were admissions on the part of the respondents of undertaking new or fresh constructions. He pointed out that there were constant improvements in the number of houses or structures in the suit property. He submitted that all this was indicative of respondents undertaking new constructions during the pendency of the suit. The Appeal Court has duly considered all these matters. As it is, there were no interim prohibitory orders against respondents. The allegation was not that constructions were undertaken in defiance of any injunction or restraint orders.

12. The Trial Court had over-focused on the photographs taken by the Bailiff. But there were no past pictures to enable a fair comparison. There is no clear material on irreparable damage. The balance of convenience also does not favour demolishing the respondents'

residential houses at the interim stage. These are issues of fact, and at the interim stage, the Appeal Court has taken a view which cannot be styled as arbitrary or perverse view.

13. Considering the limited scope of jurisdiction in such matters and since the view taken by the Appeal Court does not suffer from any perversity or arbitrariness, no case is made out for the grant of any relief in this petition.

14. Besides, the learned Counsel pointed out that in the matter before the Mamlatdar, where the issue of tenancy is pending, the main evidence of both parties has already been concluded, and now additional evidence is led by some of the respondents. Therefore, requiring respondents to pull down their residential houses at this stage would not be equitable, given the facts and circumstances on record.

15. For all the above reasons, this petition is dismissed. However, there would be no order for costs.

16. Further, it is clarified that the Trial Court must decide the suit on its own merits without being influenced by any observations in the impugned order or, for that matter, the current order. Furthermore, the Trial Court must also not be affected by previous orders denying interim reliefs to the petitioners. The observations in such temporary

orders are only to decide the issue of interim relief. Typically, such observations are irrelevant at the final stage. After the parties' lead evidence, the matter must be decided on merits by advertng to such evidence.

17. With the above clarification, this petition is disposed of.

18. There shall be no order for costs.

M. S. SONAK, J.

NITI K
HALDANKAR



Digitally signed by
NITI K HALDANKAR
Date: 2023.04.10
15:54:07 +05'30'