

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.57/2022

MATHEW FERNANDES @ MOTES ... PETITIONERS
FERNANDES AND ANR.

Versus

GILBERT ANTHONY FERNANDES
AND 35 ORS. ... RESPONDENTS

Mr Dharmanand Vernekar, Advocate *for the Petitioners.*

CORAM: M. S. SONAK, J.

DATED: 13th July 2023

P.C.:

1. Heard Mr D. Vernekar for the petitioners.
2. The challenge in this petition is to the Appeal Court's order dated 08.04.2021 by which the Trial Court's order dismissing the application for injunction by the respondent/plaintiff was set aside and petitioners were restrained from undertaking any construction in the suit property.
3. Mr Vernekar submits that the respondent/plaintiff came up with a false case of being a sole owner of the suit property and based upon the same the Trial Court correctly dismissed the

injunction application. Mr Vernekar submits that the petitioners are the co-owners of the suit property and in the past, there was an oral partition. He, therefore, submits that the injunction granted by the Appeal Court warrants interference.

4. Mr Vernekar, however admitted that no permissions were obtained by the petitioners for undertaking what he chooses to call are only repairs within the plinth.

5. From the photographs shown to me by Mr Vernekar (in the compilation today handed over) it is difficult to accept Mr Vernekar's contention that only repairs were being undertaken. At least *prima facie* it appears that the earlier structure was being replaced with a new structure. This obviously cannot be done without permissions from the municipality and if necessary the planning department or the planning authority.

6. Therefore, even without going into the issue whether the First Appellate Court was justified in injuncting a co-owner or whether the injunction application should have been dismissed on the ground of the respondent's claim of exclusive ownership, the injunction order granted by the First Appellate Court need not be interfered with. One of the reasons the First Appellate Court has granted injunction is because no permissions from the competent authority were produced by the petitioners.

7. Considering the above circumstances and the law laid down in *Wander Ltd. And Anr. vs Antox India P. Ltd. - 1990 Supp (1)*

SCC 727, no case is made out to interfere with the impugned order. However, if and when the petitioners obtain permissions from the concerned authorities, they are granted liberty to apply for vacation of this injunction order before the trial court. If such an application is made, the trial court to consider the same on its own merits without being influenced by the Appeal Court's order or this order.

8. With the above liberty, this petition is disposed of. There shall be no order for costs.

M. S. SONAK, J.

SUCHITRA
NANDAN
SINGBAL / Digitally signed by
Suchitra Nandan
Singbal
DN: cn=Suchitra Nandan
Singbal, o=, ou=, email=singbal@nic.in, c=IN