

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 697 OF 2023**

- 1 Shri Sanjay Babuli Naik, Son of late Babuli Naik, 58 years of age, r/o H. No. 990/2, Gauthan, Priol, Ponda Goa 403 401.
- 2 Smt. Sanija Sanjay Naik, Wife of Shri Sanjay Babuli Naik, 49 years of age, r/o H. No. 990/2, Gauthan, Priol, Ponda Goa 403 401. .... Petitioners.

versus

Miss. Ranjita Fondu Naik, alias Ranjita Ravalu Gurav, daughter of Shri Ravalu Gurav, major of age, r/o H. No. 990/2, Gauthan, ....Respondent. Priol, Ponda Goa 403 401.

Mr. A. Bhobe and Ms. S. Shaikh, Advocate for the applicant.  
Mr. Nigel Costa Frias and Mr. V. Sawant, for the respondent.

**CORAM: BHARAT P. DESHPANDE, J**

**DATED: 30<sup>th</sup> November, 2023**

**ORAL JUDGMENT.:**

1. Rule. Rule is made returnable forthwith.
2. Heard parties finally at the admission stage with consent.
3. Petitioners being aggrieved by orders passed by Courts below granting temporary injunction restraining them from carrying out construction activity on the first floor of their existing house, preferred present petition.

4. Mr. Bhobe, appearing for the petitioners submitted that suit is filed by defendants claiming that there are three houses having separate house numbers and occupied by respective parties independently. He further submits that petitioners started construction on the first floor of the portion occupied by him, which was objected by the plaintiff by filing suit and claiming therein that property is common with common walls and that rights of other co-owners will be affected, if construction is continued and allowed to be carried out. Mr. Bhobe would submit that though panchayat on a complaint lodged by the plaintiff carried out inspection and issued stop work order, such issue is still independent between the petitioners and the panchayat. However, he submits that both the Courts below observed that rights of the plaintiff and other co-owners will be affected if construction is carried out or continued without obtaining permission from other co-owners which, according to him, is erroneous. He then would submit that from the reading of the plaint itself one thing is clear that plaintiff also admits that there is no common factor or common enjoyment of the said structures. There are three independent structures having three house numbers and occupied by plaintiff, defendants and their cousin. He further submitted that observation of the trial Court regarding co-ownership would certainly affect the right of the petitioners even in case of carrying out of minor repairs to existing structure.

5. Mr. Bhobe would then submit that First Appellate Court has gone completely on the different aspect as observed in paragraph 16 by concluding that wall between the houses are common walls whereas pleadings in the suit shows contrary. He submitted that such findings are perverse and would affect rights of the petitioner and therefore needs to be interfered with.

6. Mr. Costa Frias, appearing for the respondent/plaintiff, would submit that property in question is a common property/common houses though parties are residing separately by mutual consent. He submits that neither parity is having any title document to claim ownership as property is of the Devasthan and plaintiff being devotee/servant of the temple are allowed to reside and occupy the structures.

7. Mr. Costa Frias, would then submit that alleged construction carried out by petitioners would certainly affect rights of the plaintiff, since it is common property and further there is no licence or any permission from the competent authority. He submits that even a neighbour is entitled to file a suit seeking injunction in connection with illegal construction. Finally, he claim that there are concurrent findings of the Courts below. However, petitioners fail to point out any apparent error on the face of the record in such findings in order to interfere with the impugned orders.

8. Rival contentions fall for consideration as under:-

9. It is admitted fact that there are three separate units/houses having three separate house numbers occupied by plaintiff, defendants and their cousin. It is also admitted fact that these structures are adjoining each other and separated by wall having minimal distance in between. Courts below have already observed that apart from form I and XIV, neither the plaintiff nor the defendants is having any title document with regard to such structures. Plaintiff, apart from disclosing relationship refers to three residential units. In paragraph 8 of the plaint it is mentioned that plaintiff was initially residing in the suit house with her parents and after their death plaintiff is in possession and enjoyment and residing in the suit house at one portion whereas defendant nos.1 and 2 are occupying other portion. It is further found in paragraph 9 that suit house is an ancestral house divided with common wall in between three parts and all three parts have been allotted separate house number by village panchayat. Plaintiff is residing in house no.990/3 whereas defendants are residing in house no.990/2. Plaintiff's cousin is residing in house no. 990/1. Paragraph 10 of the plaint further shows that adjacent to portion occupied by plaintiff there is portion occupied by defendants separated with common wall.

10. Further averments in the plaint shows that defendants started

construction on the first floor in the portion occupied by them without obtaining permission of the competent authority including village panchayat and without any no objection from the other co-owners.

**11.** Though written statement was filed on behalf of the defendants denying all the allegations and more specifically about the common wall, fact remains and as admitted by Mr. Bhobe, there is no licence issued by village panchayat in favour of the petitioners/defendants to carry out any construction activity on the first floor. Village panchayat after carrying out inspection on a complaint lodged by plaintiff, issued stop work order.

**12.** Thus, it prima facie shows that construction activities started by the petitioner/plaintiff is without any permission or licence. Admittedly property or the suit house was initially occupied by ancestors of the parties. Thus, there is some relation between the parties by which they are claiming right over the said property/suit house. In such circumstances, observation of the trial Court as well as that of First Appellate Court regarding infringement of rights of the other co-owners in case such construction activity is allowed to be carried out, cannot be faulted. Besides this, petitioner will have to deal with show cause notice and stop work order issued by the village panchayat independently. However, such aspect of absence of any licence was rightly considered by Courts below for exercising the

jurisdiction while considering the aspect of grant of temporary injunction.

13. Mr. Costa Frias placed reliance in the case of ***Smt.Fatima Joao Vs Village Panchayat of Mercas***,<sup>1</sup> wherein Division Bench has observed that every neighbour can maintain a civil suit asking authority to discharge their function and take action against illegal construction.

14. Mr. Bhobe, learned counsel for the petitioner submitted that such decision will not be applicable in the present matter as village panchayat has already initiated action and the petitioners will have to deal with it independently.

15. It is no doubt true that village panchayat has already initiated action. However, that itself needs to be considered for the purpose of deciding three important factors which civil Court while dealing with the injunction application is required to keep in mind. These principles are prima facie case, balance of convenience and irreparable loss.

16. In the present matter, Courts below observed that all three factors are in favour of the plaintiff. While dealing with the present petition and exercising jurisdiction under Article 227 of the Constitution of India, it is clear that such findings which are based on

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<sup>1</sup> 2000(2) Goa L. T. 341.

the material placed before it and admitted facts, needs no interference. Accordingly, there is no substance in the present petition.

**17.** Petition stands dismissed. Parties shall bear their own costs.

**18.** Rule is discharged.

**BHARAT P. DESHPANDE, J.**

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