

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS.875 OF 2019 AND 384 OF 2023

WRIT PETITION NO.875 OF 2019

1. Shri. Bapu Shabi Gadekar
s/o Shabi Bapu Gadekar,
age 66 years, married, agriculturist;

2. Smt. Saraswati Bapu Gadekar,
wife of the respondent No.1,
age 57 years, housewife;

3. Shri. Tukaram Shabi Gadekar,
son of late Shabi Bapu Gadekar,
age 57 years, married, mechanic;

4. Smt. Tasvita Tukaram Gadekar,
wife of the respondent No. 3,
age 57 years, housewife,
all are Indian National and resident
of H. No. 357, Oxelbag, Dhargal,
Pernem, Goa.

....Petitioners

Versus

1. Mrs. Netra Nitin Gadekar,
wife of respondent No. 2,
age 43 years, service, married;

2. Mr. Nitin B. Gadekar,
son of late Balkrishna alias Bala Gadekar,
age 53 years, service, married,
both Indian National and temporary
resident of Flat No. 702, 7th floor,
Saishrishti Apartment,

Opposite Dream Land Park,
Near Ambar Plaza Hall,
Vijaypark road, Mira Road,
Thane-401107; and resident of
H. No. 357/C, Oshelgab, Dhargal,
Pernem, Goa;

3. Shri. Shivaji Zoswantarao Dessai,
son of late Vamanji Zoswantarao Dessai,
major, married, landlord, Indian National;

4. Smt. Ahilya Shivaji Dessai,
wife of the respondent No. 5, major,
landlady, Indian National, (both resident
of H. No. 90, Arabo, Dhargal, Pernem -
Goa);

5. Shri. Ramaji Zoswantarao Dessai,
(since deceased) through his legal heirs

5(a) Smt. Rupali Balkrishna Prabhu
Misquin, c/o Misquin Sorts Shop,
major, married, Indian National,
r/o Near Govekar Bakery,
Khorli, Mapusa — Goa, 403 507;

5(b) Mrs. Shraddha Milind Adarkar,
major, married, Indian National, 601,
Bldg. No. 23, Kalpvruksha Garden,
Co-operative Hsg. Society, Dhokali Road,
Yashaswinagar, Opp. Highland Residency,
Thane (West) 400 607;

5(c) Mrs. Sweta Mandar Bedekar,
major, married, Indian National,
r/o B-3/301, Rutu Estate, Patlipada,
Near Commissioner Bungalow,
Sandozbaug, Thane (West) 400 607;

6. Smt. Supriya Ramaji Dessai,
wife of late Ramaji Zoswantarao Dessai,
major, landlady, Indian National;

7. Shri. Raghunathji Zoswantarao Dessai,
(Party deleted as per order dated
11/01/2018) son of late Vamanji Dessai,
major, married, landlord, Indian National;

8. Shri. Laxmanaji Zoswantarao Dessai,
son of late Vamanji Zoswantarao Dessai,
major, married, landlord, Indian National;

9. Smt. Suvaran Laximanajio Dessai,
wife of respondent No. 8,
major married, landlord,
and Indian National

(all from Sr. No. 6 to 9 are r/o
H. No. 90, Arabo, Dhargal, Pernem, Goa).Respondents

Mr Guru Shirodkar with Ms Varsha Parab, Advocates for the
Petitioners.

Mr Ajay Menon with Ms S. Drago, Advocates for Respondent Nos.1
and 2.

AND
WRIT PETITION NO.384 OF 2023

1. Mr. Nitin Gadekar,
Son of late Balkrishna @ Bala Gadekar,
Age 53 years, service, married,

2. Mrs Netra Nitin B. Gadekar,
Wife of Mr. Nitin Gadekar
Age 53 years, service, married,
Both temporary residents of
Flat No. 702, 7th Floor,

Saishrishti Apartment,
Opposite Dream Land Park,
Near Ambar Plaza Hall,
Vijaypark road, Mira Road,
Thane, 401107.
Both are Indian Nationals and
Resident of H. No. 357/C,
Oshelbag, Dhargal, Pernem, Goa.

....Petitioners

Versus

1. Shri Bapu Shabi Gadekar,
Son of late Shabi Bapu Gadekar,
Age 66 years, married, Agriculturist,

2. Smt. Sraswati Bapu Gadekar,
wife of the respondent no.1,
Age 57 years, housewife,

3. Shri Tukaram Shabi Gadekar,
Son of late Shabi Bapu Gadekar,
Age 57 years, married, mechanic,

4. Smt. Tasvita Tukaram Gadekar,
Wife of the respondent no.3,
Age 57 years, housewife,
All are Indian Nationals and
Resident of H. No. 357,
Oxelbag, Dhargal, Pernem, Goa.

....Respondents

Mr Ajay Menon with Ms S. Drago, Advocates for the Petitioners.

Mr Guru Shirodkar with Ms Varsha Parab, Advocates for the Respondents.

CORAM: M. S. SONAK, J.

DATE : 6th OCTOBER 2023

ORAL JUDGMENT :

1. Heard Mr Guru Shirodkar, who appears along with Ms Varsha Parab for the petitioner in Writ Petition No.875 of 2019 and Mr Ajay Menon who appears along with Ms S. Drago for the respondents no.1 and 2.
2. Mr Ajay Menon with Ms S. Drago appears for petitioners in Writ Petition No.384 of 2023 and Mr Guru Shirodkar appears with Ms Varsha Parab for respondent nos.1 and 2 in the said petition.
3. Rule in both the petitions. With the consent of and at the request of the learned Counsel for the parties, the rule is made returnable forthwith.
4. The challenge in Writ Petition No.875/2019 is to the impugned order dated 31.08.2019, by which the appeal Court allowed the respondents' application for temporary injunction and directed the petitioners to remove the lock of the suit house and permit the respondents to use the same.
5. Mr Shirodkar submits that at no stage were the petitioners opposed to the respondents' using the suit house. However, the petitioners had spent an additional amount of ₹2,26,000/- (Rupees Two Lakhs Twenty-Six Thousand only) for constructing the suit house and the respondents were duty-bound to pay the said amounts to the petitioners.

6. Considering the narrow dispute, this Court had requested Mr Menon to obtain instructions from the respondents whether they would be willing to deposit this amount of ₹2,26,000/- (Rupees Two Lakhs Twenty-Six Thousand only) before the Trial Court pending adjudication of the dispute as to whether such amount was really due and payable to the petitioners or not.

7. Mr Menon, based on instructions from respondent nos.1 and 2, now states that the said respondents would, without prejudice, deposit this amount of ₹2,26,000/- (Rupees Two Lakhs Twenty-Six Thousand only) before the Trial Court within fifteen days from today. He submits that this amount could be invested in a Nationalized Bank and made subject to the final orders in the suit.

8. The above arrangement seems fair and proper. Further, Mr Shirodkar also gracefully accepts the above arrangement based upon the instructions of the petitioners.

9. Accordingly, the respondent nos.1 and 2, consistent with their statement, must deposit an amount of ₹2,26,000/- (Rupees Two Lakhs Twenty-Six Thousand only) before the Trial Court within fifteen days from today. Upon deposit, the Trial Court is to invest this amount in a Nationalized Bank. The status of this amount shall abide by the final orders in the suit.

10. Upon deposit of the above amount of ₹2,26,000/- (Rupees Two Lakhs Twenty-Six Thousand only), the petitioners must deposit the key to the suit house in the Trial Court with due intimation to the Advocate appearing on behalf of respondent nos.1 and 2 before the Trial Court, where the respondents represented by Mr Menon are the

plaintiffs. Further, the petitioners must not obstruct the respondent nos.1 and 2 using the suit house pending the disposal of the suit.

11. In Writ Petition no.384/2023, the petitioners, who are respondents nos.1 and 2 in Writ Petition No.875/2019 challenge the Trial Court's order denying them police protection despite the appeal Court's order dated 31.08.2019 granting an injunction in their favour.

12. Now that it is clarified that the amount of ₹2,26,000/- (Rupees Two Lakhs Twenty-Six Thousand only) will be deposited before the Trial Court and upon such deposit, the plaintiffs in the suit would be allowed to use the suit house, there is no necessity of any police protection.

13. The directions issued in these petitions are in aid of the interim orders made by the Trial Court. Accordingly, these directions are a part of the arrangements that would prevail pending the final disposal of the suit. Ultimately, it is for the Trial Court to make final orders on the disputes between the parties.

14. This Court is of the opinion that the parties must endeavour to sort out their disputes by mediation. The Counsel for the parties to also obtain instructions on whether they would explore the option of mediation rather than long-drawn litigation. The instructions must be reported to the Trial Court so that the Trial Court can refer the parties to mediation.

15. Accordingly, by issuing the above directions both these petitions are disposed of. No costs.

16. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.

NITI K
HALDANKAR

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K HALDANKAR
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