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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.42 OF 2020

1. Shri Prakash Ladu Tamaskar,
s/o late Shri Ladu Tamaskar,
age 45 years, r/o House No. 425/1,
Curichirem, Dhatwada,
Bicholim, Goa.

2. Shri Sandip Kashinath Tamaskar,
s/o late Shri Kashinath Tamaskar,
age 40 years, business,
r/o House No. 426,
Curichirem, Dhatwada,
Bicholim, Goa.

2a. Sejal Sandeep Tamoskar,
Wife of late Sandeep Kashinath Tamoskar,
Aged 41 years, widow,
Indian National

[Amendment carried
out vide order dated
01/03/2022]

2b. Pawan Sandeep Tamoskar,
Son of Late. Sandeep Kashinath Tamoskar,
16 years of age, Minor
Indian National

2c. Dasksh Sandeep Tamoskar,
Son of Late. Sandeep Kashinath Tamoskar,
12 years of Age, Minor
Indian National

All above residents of R/o H. No.426,
Curichirem, Dhatwada,
Bicholim, Goa.

... Petitioners.

(Petitioner No.2b and 2c represented by their
Legal Guardian i.e. Petitioner No.2a.)

Versus

[1. Shri Daji @ Daju Rama Varak,
s/o late Shri Rama Mamu Varak,
age 66 years, agriculturist,] [since deceased] [Amendment carried
out vide order dated
10/08/2023]

2. Shri Jani Daji @ Daju Varak,
(since deceased)
Wife of Shri Daji @ Daju Rama Varak,
Aged 50 years, housewife,
Both r/o House No. 422,
Curichirem, Bicholim, Goa

2a. Shri Rama Daji Varak,
(since deceased through is legal heirs)

2a.(i) Mr. Nikhil Rama Varak,
Age 13 years, student, minor

2a.(ii) Mr. Vithal Rama Varak,
Age 11 years, student, minor

2a.(iii) Miss Nikita Rama Varak,
Age 12 years, student, minor

2b. Smt. Sita Rama Varak,
Age 32 years, student
All r/o H. No. 422, Curichirem,
Dhatwada, Bicholim, Goa

2c. Shri Thaku Daji Varak,
s/o Shri Daji Rama Varak,
age 35 years, labour,
and his wife,

2d. Smt. Sangeeta Thaku Varak,
w/o Shri Thaku Daji Varak,
Age 34 years, housewife,
Both resident of House No. 422,
Curichirem, Dhatwada,
Bicholim, Goa

2e. Shri Subhas Daji Varak,
s/o Shri Daji Varak,
age 32 years, service,

2f. Smt. Shubhangi Subhas Varak,
w/o Shri Subhas Varak,
age 30 years, housewife,

2g. Smt. Sarita Biraji Lambar
@ Smt. Mali Daji Varak,
w/o Shri Biraji Lambar
(since deceased through her legal heirs)

2g(i) Shri Biraji Viraj Lambar,

2g(ii) Shri Nagesh Biraji Lambar,
s/o Shri Biraji Lambar,
age 21 years, student, major

2g(iii) Shri Janu Biraji Lambar
s/o Shri Biraji Lambar,
age 15 years, student, minor

2g(iv) Shri Laximan Biraji Lambar,
s/o Shri Biraji Lambar,
age 13 years, Student, minor

2g(v) Kum. Vanita Biraji Lambar
d/o Shri Biraji Lambar,
age 22 years, major

all r/o House no. 422, Dhangar Wada,
Curchirem, Bicholim, Goa

2h. Shri Birjai Vithal Lambar,
s/o Shri Vithal Lambar,
age 40 years, Labour,
r/o H. No. 422, Curchirem,
Dhangarwada, Bicholim, Goa

2i. Shri Deu Vithal Ghare
Son of Shri Vithal Ghare
Age 45 years, married,
Labour and his wife

2j. Smt. Deepika Vithal Ghare @
Smt. Shali Daji Varak,
d/o Shri Daji Rama Varak,
age 33 years, housewife,

both r/o H. No. 359, Kumbral,
Dodamarg, Maharashtra.

... Respondents.

Mr Prasheen Lotlikar with Mr Bhavesh Lotlikar, Advocates for the
Petitioner.

Mr A.D. Bhobe with Ms Ramona Prazeres, Advocates for the
Respondents.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 05 October, 2023

ORAL JUDGMENT:

1. Rule. Rule is made returnable forthwith.
2. Heard parties finally at the stage of admission itself.
3. Petitioners/Original Defendants are challenging the impugned

order dated 25.11.2019 passed in Misc. Civil Appeal No.25/2019 by the learned District Judge-2, Mapusa wherein order passed by learned Civil Judge, Bicholim on the application for injunction was set aside and the said application filed by the Respondents/Plaintiffs was allowed subject to protecting the right of the present Petitioner with regard to 100 square metres.

4. Mr Lotlikar appearing for the Petitioners vehemently submitted that suit filed by the Plaintiff is itself not tenable for non-joinder of the Government which is admittedly the owner of the entire property. He submits that the Respondent/Plaintiff is himself an encroacher and, therefore, cannot claim any injunction even against the Petitioners/Defendants. He further submitted that the Plaintiff has failed to prove prima facie case by showing title to the property, and the sale deed which has been relied upon by the Plaintiff is itself not questioned for the simple reason that the predecessor-in-title of the Plaintiff had no title to the suit property.

5. Mr Lotlikar would then submit that the Plaintiff is otherwise claiming to be an encroacher on the Government land and his application for regularisation is still pending. Therefore, the Plaintiff himself is not having any right over the said property. Mr Lotlikar would submit that the learned First Appellate Court completely lost sight of the contention raised by the Defendants/Petitioners in connection with the prima facie case and arrived at a wrong conclusion. He submits that the learned Trial Court/Civil Court considered this aspect properly and rejected the injunction application. He, therefore, submits that the impugned order

needs to be quashed and set aside by restoring the order of the Trial Court.

6. Per contra, learned Counsel Mr Bhobe appearing for the Respondents/Plaintiff would submit that the suit is simpliciter for injunction on the basis of possession of the Plaintiff. Defendant who is only having right over an area of 100 square metres, tried to encroach upon the land in possession of Plaintiff and, therefore, the suit is filed to protect the possession of Plaintiff, though as an encroacher. He submits that the Defendant failed to show better title or better possessory rights over the suit property and accordingly, the First Appellate Court considered this aspect. He submits that the observations of the First Appellate Court are on settled propositions of law and need no interference.

7. Rival contentions fall for determination as under.

8. The suit is filed simpliciter for injunction wherein the Plaintiff claimed that he is in possession of Government land having an area of 23575 square metres out of Survey No.133/0 of Curchirem village in Bicholim Taluka. The Plaintiff also claimed that he purchased the said property by registered sale deed from one Pandu Rama Gaonkar and is in possession and enjoyment of it for last 20 years. The main contention of the Plaintiff is that the Defendant/Petitioner herein tried to disturb the possession of the Plaintiff over the suit property which resulted in filing the suit for grant of injunction.

9. The Defendants/Petitioners filed written statement and resisted the plea of grant of temporary injunction. The Defendant claimed that he is also in possession of some portion of Survey No.133/0 of the said village.

It is his contention that the land belongs to the Government and that the suit is not maintainable for want of joining the Government, being the owner.

10. The learned Civil Court at Bicholim after considering the pleadings and the documents on record, rejected the application for grant of temporary injunction. Being aggrieved by such order, Plaintiff preferred Misc. Civil Appeal No.25/2019 before the District Court at Mapusa. While deciding the said appeal by the impugned order dated 25.11.2019, the First Appellate Court observed that the Plaintiff prima facie proved his possession over the area of 23575 square metres from Survey No.133/0 and his application for regularisation is pending before the concerned authorities. It was further observed that Defendant except showing right over 100 square metres of Survey No.133/0, failed to show any better possessory right or even title to the suit property than that of Plaintiff. Accordingly, the First Appellate Court reversed the order passed by the Civil Court and protected the Plaintiff by granting temporary injunction. The First Appellate Court also protected the Defendant with regard to this right of 100 square metres out of Survey No.133/0.

11. I have perused the record and the documents placed along with the present petition. Admittedly, the land belongs to the Government and there are documents in the form of report of the Talathi in Case No.4/11/1993 which indicates that the Deputy Conservator of Forests admitted about the encroachments over an area of 23575 square metres in Survey No.133/0 by the Plaintiff. Similarly, his application for regularisation of such encroached area on the Government land is pending

adjudication.

12. On the other hand, Defendant could succeed by placing on record documents which show that only 100 square metres of land out of Survey No.133/0 was allotted to him. There is no other material to show that Defendant is otherwise in possession of an area exceeding 100 square metres.

13. The observations in the impugned order clearly go to show that even an encroacher is entitled to protect his possession except against the true owner. This proposition is a settled proposition of law.

14. At the time of considering the application for temporary injunction, the Plaintiff is required to show a prima facie case. The pleadings in the present matter show that the Plaintiff is claiming right over the suit property on the basis of a sale deed and in the alternative, on the basis of encroachment, pending regularisation. Thus, it is clear that Plaintiff has not suppressed the aspect of encroachment on the Government land. The documents placed on record by the Plaintiff clearly show that even the Deputy Conservator of Forests admits to the encroachment carried out by the Plaintiff. This fact is found in the report of the Talathi in the year 1993. Thus, prima facie, it is established that the Plaintiff is in possession though on the basis of encroachment on an area of 23575 square metres of Government land in Survey No.133/0. It is not the case of Defendant that any action has been taken by the Government against Plaintiff for removal of such encroachment till date. On the other hand, Defendant is also claiming to be in possession of the same area. However, it is not clear on what basis the Defendant is claiming possessory right over such area which

is depicted as the suit property in the plaint.

15. Thus, the Plaintiffs' possessory right till disposal of the suit qua the Defendants' right to claim possession over it, needs to be protected and this aspect has been considered by the First Appellate Court in a manner which is settled proposition.

16. The impugned order, therefore, needs no interference. The petition is, therefore, devoid of merit and stands rejected accordingly.

17. Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.

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FRANCISCO
DSOUZA

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