



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 13292 OF 2024

1. Avinash Dominic Ghosal

Age : 48 years, Occ. : Business
R/at Chulne, Diwanman, Vasai
Taluka Vasai, District Palghar

2. Kavita Robert Lopes

Age : 51 years, Occ.: Housewife
Gokhivare Vasai (East)
Taluka Vasai, District Palghar

3. Ovita Vijay Collaco

Age : 46 years, Occ. Service
Chulana Manikpur Road,
Manikpur Vasai, Taluka Vasai
District Palghar

...Petitioners

Vs.

1. Smt Apolina Bastyav Miranda

Age : 65 years, Occ.: Housewife
R/at. Chulne, Diwanman, Vasai (West)
Taluka Vasai, District Palghar

2. Mr. Roston Bstyav Miranda

Age : 40 years, Occ.: Service
R/at. Chulne, Diwanman, Vasai (West)
Taluka Vasai, District Palghar

3. Mrs. Rumilda Sanket Gonsalves

Age : 36 years, Occ.: Service
R/at Above Aadhar Medical
Manikpur Naka, Vasai (West)
Taluka Vasai, District Palghar

4. Johna Ignatius D'souza

Age : 68 years, Occ: Housewife
 R/at. Chulne, Diwanman, Vasai (West)
 Taluka Vasai, District Palghar

5. Honey Ignatius D'souza

Age : 49 years, Occ.: Service
 R/at. Chulne, Diwanman, Vasai (West)
 Taluka Vasai, District Palghar.

6. Laila Johson Gonsalves

Age : 47 years, Occ. : Service
 R/at Chaulk Shejol, Chulne
 Vasai (West), Taluka Vasai
 District Palghar

...Respondents

Mr. Prafulla B. Shah i/by Adv. Kavyal P. Shah	Advocate for the Petitioners
Mr. Anil D'souza a/w Mr. Mark D'Britto i/by Mr. Ernest N. Tuscando	Advocate for the Respondent Nos. 1 to 3

CORAM : S. M. MODAK, J.

DATE : 08th OCTOBER 2024**ORAL JUDGMENT :-**

1. The issue involved in this Writ Petition is whether the Court of the Additional Sessions Judge, Vasai was justified in reversing order of the temporary injunction granted by the trial Court. The Appellate Court has reversed the order of granting temporary injunction and

modified it by restraining three defendants from creating third party interest or charge over the suit property till disposal of the suit.

2. I have heard both the sides.

3. These orders were passed in Regular Civil Suit No. 119 of 2024 filed by the present Petitioners against in all seven Defendants. Present Respondents are the contesting Defendant Nos. 1 to 3. The prayers in the suit includes :-

a) injuncting the contesting Defendants from stopping the construction which is under way.

b) It also includes removal of the construction on two guntas of the land and handing over peaceful possession to the Plaintiffs.

4. The Plaintiffs claim to be the owner of the two pieces of the land, bearing Survey no. 123 Hissa No. 1 and Hissa No. 6. It is on the basis of the registered sale deed dated 24.11.1975.

5. Whereas the contesting Defendants are the legal representatives of one Bstyav Miranda and title documents are as follows:-

a) he has purchased the property from one Mohammed Amin Haji Noormohammed and Anr. vide registered sale deed dated

31.12.1987.

- b) Whereas those vendors have purchased it from one Appa Kamat vide registered sale deed and
- c) said Appa Kamat has purchased the land from the original owner Michael Colaso.

Land which is transferred by these documents is Survey no. 123 Hissa No. 6 – four and ½ guntas of the land. The grievance of the Plaintiff is the said Michael Colaso was empowered to sale only four guntas of the land. Whereas he has sold ½ guntas more.

6. The contesting Defendants have filed written statement and one of the contention taken is even though the land has changed hands from several persons, all these sale deed were not challenged by the Plaintiffs. This contention was not accepted by the trial Court.

Findings by Trial Court

7. The trial Court has enjoined the Defendants from carrying out further construction. Trial Court opined there is no need to challenge the documents of title of Defendant Nos. 1 to 3's father and their earlier documents. The reason is Plaintiffs document is earlier in time. (para no. 12). Trial Court further observed there is likelihood of

completing construction by contesting Defendants.

Findings by Appellate Court

8. When the Appellate Court has reversed the injunction, the Appellate Court observed as follows:-

- (i) The plinth work was over in first and second week of February 2024 and the suit was filed on 07.03.2024. (para 11)
- (ii) The Appellate Court referred the measurement map produced by contesting Defendants. Measurement was done on 31.12.2014. It shows their possession prior to 31.12.2014.
- (iii) The Appellate Court opined that the merit can be decided after adducing evidence by both the sides. Appellate Court further observed the ambiguity can only be cleared after carrying out measurement of respective property by way of joint measurement. (para no. 12).
- (iv) The Appellate Court emphasized that plaintiff does not disclose as to how much area of land of plaintiff is encroached by the Defendants and on how much area of

land of Defendant Nos. 1 to 3 carried out construction work.

(v) That is why the Appellate Court has considered there cannot be blanket injunction against the Defendants.

9. It is also true that the Appellate Court has referred the observations in case of Anathula Sudhakar Vs. P. Buchi Reddy¹ Now the issue is :-

a) whether the correspondence with the Corporation can be considered and

b) whether findings of the Appellate Court that description of the encroachment is not pleaded can be said to be erroneous.

10. So far as carrying out foundation considered, it is case of the Plaintiffs only that it was already carried out, that is why he has sought for removal of that foundation. Whereas Exh. 5 deals with further construction.

11. Learned Advocate Mr. Shah invited my attention to the various documents including the plan on page no. 27. Additionally, he has invited my attention to the two correspondence made with the Vasai

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Virar Municipal Corporation vide letters dated 07.03.2024 and 11.03.2024. They have informed the Plaintiffs that no building permission was found in their record in respect of Survey no. 123/6. It is admitted fact that this correspondence is not referred in the suit.

12. Additionally, my attention is invited to the show cause notice issued by the Assistant Commissioner to the Defendant-Rumila. She was asked to produce the ownership documents, otherwise action will be taken against her under Sections 52, 53 and 57 of the Maharashtra Regional and Town Planning Act, on page no. 159. It is true that these documents even though not pleaded in the plaint, it is produced before trial Court on page no. 133. It is true that these documents were not referred by the trial Court and by the Appellate Court also.

13. This Court feels that when the Plaintiffs have annexed plan and also pleaded about foundation and when the defendants have admitted about carrying out foundation, I think there is no ambiguity on that aspect. Because description of the encroachment is required for the purpose of execution of the decree, if it is passed. So what was prayer in Exh. 5 is to “*injunct Defendants from carrying out further construction*”. In that sense, this finding of the Appellate Court is

erroneous.

14. However, I am not inclined to interfere in the order of the Appellate Court reversing the Order of the trial Court, for the reason that the declaration about ownership of the land is not sought. So this Court feels that the evidence has to be adduced. Because it is disputable issue whether foundation was carried out on the Plaintiffs land or on the land purchased by the Defendants.

15. The Court is required to decide the issue whether the original owner has sold ½ guntas of land in excess or not. So this Court does not feel that interference is warranted. The Appellate Court still has restrained the Defendants from creating third party interest over the suit property. This Court feels that this is the most judicial order which could have been passed considering the merits of the matter.

About correspondence

16. When there is correspondence with the Corporation about illegal construction, this Court feels not to make any observations because there are no pleadings in the plaint. It can only be said that there are remedies available to the Plaintiff as per the provisions of the Maharashtra Regional and Town Planning Act and law will take its

own course. Hence Order:-

ORDER

- (a) With these observations, Writ Petition is dismissed.
- (b) The observations are *prima-facie*. Suit to be decided on its own merits.
- (c) The trial Court to give priority to this suit and try to dispose of as early as possible.

[S. M. MODAK, J.]