



IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.814 OF 2024

1. Yogesh R. Dessai
Son of late Ramesh Dessai,
Age- 36 years, married
Occupation – service
Resident of H.No.16, Quitol,
Fatorpa, Quepem, Goa.
2. Jayesh Krishna Naik Dessai
Son of late Krishna Naik Dessai,
Age- 40 years, married
Occupation – service
Resident of H.No.15, Quitol,
Fatorpa, Quepem, Goa.

.... Petitioners.

V/s

1. Putu Mortu Naik Dessai
Age -72 years, married,
2. Prashal Putu Naik Dessai
Age – 33 years, married,
3. Pankaj Putu Naik Dessai
Age – 38 years, married,

All residents of Quitol,
Fatorda, Quepem, Goa.

... Respondents

Mr. Sudesh Usgaonkar, Senior Advocate with Ms. Rossette Perreira,
Advocate for the Petitioners.

Mr. Shivan Desai with Ms. Riya Amonkar, Advocates for the Respondents.

CORAM : VALMIKI MENEZES, J.

DATED : 26th JUNE 2025

ORAL JUDGMENT:

1. The Petitioner invokes the supervisory jurisdiction of this Court under Article 227 of the Constitution of India to impugn judgment dated 06.09.2023 passed by the District Court, South Goa in Misc. Civil Appeal No. 41 of 2022, whereby the Petitioners Appeal under Order 43 CPC against order dated 10.05.2021 passed by the Civil Judge Junior Division Quepem, in Regular Civil Suit No. 29/2017/B, refused grant of an interim injunction pending disposal of the suit. The Petitioners are the original Plaintiffs in the suit.

2. The suit was filed for relief of mandatory injunction to direct the Respondents/original Defendants to demolish a construction occupying an area of 89.52 sq.mts. of the suit property bearing survey No.6/2, Village Quitol, Quepem Taluka. The Plaintiffs claim to be owners in possession of land under Survey No. 6/2 whilst the Defendants were occupants in relation to a survey holding to the West of the Plaintiffs property under Survey No.6/1. It was the case of the Plaintiffs that the Defendants, around 01.04.2017 commenced construction of a house structure in Survey No. 6/1 which partly encroached upon the Plaintiffs land under Survey No. 6/2. Complaints were made to the Village Panchayat, Block Development Officer, Deputy Collector, Quepem who issued a memorandum to the Mamlatdar of Quepem on 05.04.2017 to carry out site inspection. As no action was taken, the Plaintiffs claimed that they were left with no option but to approach the Civil Court to seek a mandatory injunction to remove the encroachment.

3. The suit was filed on 17.05.2017 on which date, the Plaintiffs claimed that the construction was on going, by encroachment upon the suit property. An application for temporary injunction to restrain the Defendants from carrying out further construction in the suit property was filed on the same date along with photographs which depicted the state of the construction as on the date of filing of the suit. On notice being issued to the Defendants, they put in appearance and filed their Affidavit-in-reply; after hearing the parties, on 24.05.2017, the trial Court directed the Defendants to maintain status quo and to stop the construction on the Western side of Survey No. 6/2 till filing of the Affidavit in sur-rejoinder. On the same date, an Affidavit dated 24.05.2017 of a Surveyor was placed on the record of the trial Court along with the report with plan of the Surveyor, who conducted a survey on 08.05.2017. The Surveyor's plan, as elaborated in the Surveyor's affidavit, contained the actual position of the construction at loco, as on that date, in relation to the Government survey plan.

4. By an application dated 09.06.2017, the Plaintiffs sought action for contempt against the Defendants for violating the ad-interim order of injunction dated 24.05.2017 of the trial Court, by continuing to carry out further construction in the suit property, by filing an application under Order 39 Rule 2A. This application is pending enquiry before the trial Court.

The Defendants then filed their written statement on 07.08.2017 contending that their construction was within the survey line of their own property under Survey No.6/1 and there was no encroachment in Survey No.6/2. It was their defence that they have obtained repair/reconstruction license from the Panchayat, pursuant to which they were constructing within their property under Survey No. 6/1. The Defendants have also

denied that the Plaintiffs have title to property under Survey No. 6/2 or that the land claimed by the Plaintiffs admeasuring 2635 sq.mtrs under Survey No.6/2 corresponds to Matriz Nos. 122 and 125 as claimed in the plaint. The Defendants also claimed that tree cutting license was granted to the Defendants on 03.06.2016 pursuant to which they cut a tree in Survey No.6/1.

5. With these pleadings, the parties argued the application for temporary injunction, which was dismissed, primarily on two grounds:

A. That the Plaintiffs have not been able to substantiate their claim that Yesso Bapu Naik Dessai, whose name is entered in the survey records was their grandfather or that, Narayan Rama Naik Dessai whose name is entered in the matriz record, was the great grandfather.

B. That though the Surveyor's plan shows the encroached area the report does not mention the extent of which construction was on going on land under Survey No.6/2.

6. The Appellate Court has considered that the issue of title would have to be decided at the trial stage and at this stage, all that was necessary was for the Plaintiffs to show that there was an illegal construction carried out in land under Survey No.6/2. The District Court concludes that the Surveyor's plan does not depict the illegal structure within the area of 89.52 sq. mtrs., and accordingly dismissed the appeal.

7. Learned Senior Advocate Mr. Sudesh Usgaonkar for the Petitioner submits that both Courts have concurrently erred by considering irrelevant material whilst deciding the temporary injunction, instead of considering the report of the Surveyor, the survey plan and the specific averments

made by the Defendant in relation to the ongoing construction. He submits that according to the survey plan, there was no existing structure in survey No.6/1 claimed by the Defendants at the location where the Defendants claimed that they were reconstructing / repairing their structure. The trial Court has also completely ignored the fact that the repair license is without any plan and there was no Surveyor's report of the Defendants on record which contradicts the Plaintiffs report as to the location of the structure. He further submitted that in absence of any pleading in the written statement as to the extent of the Defendants structure, the Court ought to have atleast granted a temporary injunction that the status quo be maintained at site until the suit was disposed of.

8. *Per contra*, learned Advocate Mr. Shivan Desai for the Respondents submits that two Courts have taken a concurrent view and arrived at certain findings as to the location of the structure in question and prima facie case. The appellate Court has confirmed the discretion exercised by the trial Court in favour of the Defendants, and a writ Court, acting in its supervisory jurisdiction ought not to interfere with this discretion. Learned Advocate has submitted that the allegations that there has been a breach of the status quo order granted on 24.05.2017 is presently under inquiry in an application filed under Order 39 Rule 2A CPC. He further submits that the perusal of the report of the Plaintiffs Surveyor itself co-related with the tree cutting license, would leave no manner of doubt as to the fact that there was no encroachment in the Plaintiffs property under survey No.6/2; he submits that the boundary between survey No.6/1 and survey No. 6/2 actually exists at site and is shown by the Plaintiffs Surveyor as a kaccha wall, with a root of a Jambul tree existing immediately to its West. He therefore submits that the reconstruction is not an encroachment.

9. The question before me is whether the Petitioners have made out a case in the facts and circumstances set out in the petition, to call for interference with the impugned original and appellate order dismissing the application for temporary injunction, in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

10. The Plaintiffs have pleaded that they are in possession of land under Survey No. 6/2 for which Yesso Naik Dessai is shown as one of the occupants. They claimed that Yesso is their grandfather who had two sons Ramesh Yesso Naik Dessai and Krishna Yesso Naik Dessai who are respectively the fathers of Plaintiff No.1 Yogesh and Plaintiff No.2 Jayesh. The Plaintiffs do not deny that the Defendants are in occupation of land under Survey No.6/1 which lies to the West of their property. The Plaintiffs have produced on record the survey record in Form I and XIV standing in the name of Yesso Naik Dessai. They have also produced on record revenue proceedings under Section 114 and 115 and under Section 188(b) of the Land Revenue Code with respect to Survey No. 6/2, filed by one Caitano Fernandes whose name also appears in the record of this property. In the revenue proceedings, a judgment was passed by the Deputy Collector that confirms the occupation of the father of the Applicants i.e. Yesso in Survey No. 6/2. In those proceedings Krishna and Ramesh, fathers of the present Plaintiffs were parties as heirs of Yesso Naik Dessai. In addition, the Plaintiffs have produced the matriz certificate of land under No.122 and 125, which they claim corresponds to Survey No.6/2 which stood in the name of Narayan Rama Naik Dessai, father of Yesso. Though this title is denied by the Defendants, prima facie therefore, from the survey records, it appears that the Plaintiffs are in occupation of land under Survey No.6/2.

11. The entire controversy revolves around an alleged illegal construction erected by the Defendants, which by their own pleadings in paragraph Nos.2 and 13 is restricted to reconstruction /repair of a house situated in Survey No. 6/1. There is not a single pleading in the written statement that the structure sought to be under repair/reconstruction by the Defendants falls in Survey No.6/2, thereby giving a clear impression that their structure is restricted to land under Survey No.6/1. If this be the case, the claim that the structure was erected pursuant to a repair license (the date of which is not pleaded in the written statement), which license also does not have a plan appended to it, the structure in question, by the Defendants own say is restricted to Survey No.6/1.

If one peruses the survey plan, it is apparent that there are two small structures along the Eastern boundary of Survey No. 6/1 about 20meters apart. According to the plan of the Surveyor of the Plaintiffs, with a supporting affidavit, filed in the trial Court, the suit structure which is a new house has encroached approximately 89.52 square meters within Survey No.6/2. Admittedly, a structure, even if it was not considered an encroachment in survey No.6/2, was constructed between the space of approximately 20 meters between the two structures in Survey No.6/1 as shown on the Government Survey Plan. It stands to reason that the structure being constructed by the Defendants was not an existing house on the survey plan but was constructed after the promulgation of the survey, and is of recent origin.

12. The suit was filed on 17.05.2017 alleging a completed construction encroaching 89.52 square meters into Survey No.6/2. The plaint further alleges that construction was ongoing in Survey No.6/2 as alleged in paragraph No.11 towards its Western side. The plaint also alleges that a survey was carried out by one Augustin Furtado and a copy of the survey

plan prepared by his was annexed to the plaint. So also photographs of structure under construction, alleged to be in Survey No. 6/2 were annexed to the plaint.

13. Notice was issued to the Defendants and they appeared, but before filing the written statement, the Plaintiffs Surveyor filed an affidavit date 24.05.2017 in support of the plan drawn by him, which was attached to the plaint. In this affidavit the Surveyor reiterated the submissions shown on his plan than the construction found encroaching was of 89.52 square meters which was superimposed on the Government Survey Plan. Subsequent to this, by an order dated 24.05.2017 the trial Court has considered this position and directed the Defendants to maintain status quo, which meant that the construction which was ongoing had to be stopped and would have at most shown progress to a point seen in the photograph dated 17.05.2017 produced with the plaint. Unfortunately, the trial Court has not directed its Bailiff to conduct a site inspection as on the date status quo was directed (24.05.2017) to ascertain by photographs and a survey the extent of the construction on the date the status quo order was granted.

14. After written statement was filed on 07.08.2017, the trial Court ought to have, ascertain the status quo of the construction as on that date, however the Defendants now claimed that the construction is complete whilst the Plaintiffs have alleged contempt/ disobedience of the status quo order, necessitating a full scale inquiry into the allegations in a proceeding under Order 39 Rule 2A CPC.

Having concluded the necessity for directing the Defendants to maintain status quo as on 24.05.2017, the conclusions by the trial Court that there was no encroachment in the suit property were misplaced, when

all it had to do, was to ascertain the status quo by a Bailiff's inspection and direct no further construction which is carried out in Survey No. 6/2.

15. Instead, the trial Court examined the Defendants Surveyors report which has not reported the location of the structure, but is an opinion to substantiate the defense stand that the land under matriz no, 122 and 127 does not corresponds to land under New Survey No.6/2. There being no survey report from the Defendants to locate their repair /reconstruction of a structure fully in Survey No.6/1, as claimed by them, there was no reason to discard the Plaintiffs survey report which showed an encroachment. The entire approach of both Courts i.e. the trial Court and the Appellate Court has been flawed, resulting in unnecessary delays in now conducting inquiry under Order 39 Rule 2A.

16. However, considering that the construction is now complete and the trial Court has to determine whether the same is in violation and in disobedience of its order dated 24.05.2017 directing status quo to be maintained, there would be no purpose served in turning the clock back and continuing the order of status quo. In this view of the matter, though the impugned orders, in normal course would be required to be set aside for want of considering relevant and material facts before the Courts below, considering that the construction is now complete, and is subject to orders that may be passed in the disobedience proceedings, the impugned orders do not call for any interference in the supervisory jurisdiction of this Court.

17. For the above reasons, the petition is rejected.

VALMIKI MENEZES, J.