



IN THE HIGH COURT OF BOMBAY AT GOA

**APPEAL FROM ORDER NO. 7 OF 2026
WITH
CIVIL APPLICATION NO. 18 OF 2026
IN
APPEAL FROM ORDER NO. 7 OF 2026**

- 1) Smt. Lacima Goes e Galdinho,
W/o. Mr. Jose Galdinho, 37 years
of age, housewife, And her
husband,
- 2) Mr. Jose Galdinho, 48 years of
age, Son of Mr. Manuel Galdinho,
Service, both R/o. H. No. 1/A,
Maddem, Orlim, Salcete-Goa.

.....Appellants.

V/s.

1. Shri. Merwyn Mathias, S/o. Mrs.
Roseline Simon Mathias, 44
years of age, Married, Service and
his wife,
- 2) Smt. Priya Merwyn Mathias, D/o.
Mr. Remy Maxim Dalmeida, 39
years of age, Both R/o. A/4,
Green Park CHS, Karkoon Bhat,
Papdy Vasai West, Vasai Palghar,
Maharasthra.
- 3) Mrs. Monica Bose, D/o. Late.
Rajendra Roberts, Major in age,
Housewife, And her husband,
- 4) Mr. Robindro Nath Bose, S/o.
Late. Santosh Kumar Bose, Both

residents of H. No. 178/D, Merry Lane, Issorcim, South Goa.

5) Mr. Loyola Furtado (Since deceased) Through Legal heir, Mr. Guildo Loyola Furtado, WolfangoD'Silva Road, Panjim-Goa.

5. Mr. Loyola Furtado (since deceased), through his legal heir,
5.(1) Mr. Jose Inacio Guido de Loyola Furtado, Alias Loyola Furtado, Through his POA, Mr. Fernando Silvestre Caraciolo de sa Pinto alias Fernando Pinto, R/o. H.No.508-A, Near R.N.D. Workshop, Opposite Gurudwara Penha de France, Betim, Bardez-Goa.

6) The Secretary/Sarpanch, Village Panchayat of Orlim, Orlim, Salcete-Goa.

...Respondents.

Mr. Nigel Da Costa Frias, Advocate with Mr. Shane Coutinho and Ms. Maria Fernandes, Advocate for the Appellants.

Mr. S. D. Padiyar, Senior Advocate with Ms. Neha Bhobe, Advocate for Respondents No.1 and 2.

Mr. Shivan Desai, Advocate with Ms. Maria Carmel Cota Viegas, Advocate for Respondent No. 5.

Mr. Sanman R. Keny, Advocate for Respondent No.6.

CORAM: VALMIKI MENEZES, J.

DATED: 13th MARCH, 2026.

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13th March 2026

ORAL JUDGMENT:

1. Registry to waive office objections and register the matters.
2. This Appeal from Order impugns order dated 24.09.2024 passed by the Civil Judge Senior division Margao in Special Civil Suit No. 10/2024A. By the impugned order, the Civil court had rejected an application for temporary injunction [Exhibit 4] filed by the Plaintiffs seeking to restrain the Defendants No. 1 and 2 from carrying out construction work in the suit property by altering or blocking their access.
3. From the averments in the Plaint, it is the case of the Plaintiffs/Appellants herein, they had purchased by way Sale Deed dated 13.08.2020, a property bearing Survey No.39/5 admeasuring 430 sq.metres, which derives its access through a property bearing Survey No.39/4 and property bearing Survey No.39/4-B. It is their case that the access through their property runs from the main road which runs along the southern boundary of land under Survey No.39/4-B, along the eastern edge of the said Survey number and enters the property owned by the Plaintiffs and its South-Eastern corner. The Plaintiffs have averred that their property is landlocked since a nullah runs along its northern boundary and it was surrounded, originally by property under Survey No.39/4 towards its west and towards its south.
4. It is the further case of the Plaintiffs that the original Survey No.39/4

was owned by Defendant No.5 who partitioned this survey holding and created a new sub-division Survey No.39/4-B admeasuring 430 sq. metres which was sold to the Defendants No.3 and 4 on 12.01.2026, who in turn, sold this parcel to the Defendants no.1 and 2 on 20.04.2021.

5. Along with the Plaint, the Plaintiffs produced a report of an Engineer, Shashank Shirwaikar, which depicts a 3 metre wide access running from land under Survey No.39/5 through a small portion of land under Survey No.39/4 and then through land under Survey No.39/4-B, along its eastern boundary. This Engineer's Report states that the original Survey 39/4 actually was a much larger property, which was bifurcated at a later date by the acquisition of an area on which a road was constructed.
6. An application for temporary injunction came to be filed which was also supported by an Affidavit of one Conceicao Vas, who was the predecessor-in-title of the Plaintiffs qua Survey No.39/5, who has averred in the Affidavit, that land under Survey No.39/5 has access for ingress and egress through the property under Survey No.39/4-B, which originally belonged to late Loyola Furtado, and was part of the original property under Survey No.39/4. Defendant No.5 is the owner of the original larger property under Survey No.39/4.
7. In answer to the claim in the Plaint and the application for temporary injunction, the Defendant No.1 and 2 brought on record the fact that

they had obtained a planning permission and construction licence for a residential house in land under Survey No.39/4-B after obtaining conversion of this plot. It is their case that land under Survey No.39/5 does not have any access through their plot. In the Written Statement, it was further averred that the Plaintiffs' Sale Deed does not refer to any access through which land under Survey No.39/5 could be approached. After denying the existence of the access claimed by the Plaintiffs, the Written Statement also takes a stand that in their own Sale Deed dated 20.04.2021, there is no access shown through their property reserved for the plot under Survey No.39/4-B. They claimed that at the time they had purchased the property, Plaintiffs' property did not share a boundary with the property of Defendants 1 and 2. They have further averred that no villagers had claimed any traditional access through their property. They also averred that the Plaintiffs do not reside or have a house in their plot, to claim the traditional access through their plot. Defendants 3 and 4, who are the vendors of the plot under Survey No.39/4-B in favour of Defendants No.1 and 2, have not filed any Written Statement, nor has Defendant No.5, who is the original owner of the plot under Survey No.39/4 prior to its partition, filed any Written Statement. The Village Panchayat - Defendant No.6, has taken the stand that the licence for the construction of a residential house in favour of the Defendants No.1 and 2 was issued on the basis of the technical clearance given by the Town Planning Department. The Panchayat, however, does not take up a categorical defence that no access exists on land under Survey No.39/4 or 39/4-B.

8. The trial Court, by the impugned Order, has dismissed the application for a temporary injunction. In the impugned Order, it has arrived at the following conclusions:
- a). That the Report of Engineer Shirwaikar, refers to a traditional access, without there being any material certifying that the access was a traditional one.
 - b). That there is a V shape portion of land falling in Survey No.39/4 between the suit property under 39/5 and the property of Defendants no.1 and 2 under 39/4B; Court concludes that the Plaintiffs have never pleaded that the suit access passes through the V shape portion in survey no.39/4, and therefore the Plaintiffs have failed to rebut presumptions under Section 105 of the Land Revenue Code, leading the Court to prima facie, conclude that such access claimed by the Plaintiffs does not exist.
 - c). That there is no access shown on the Government Survey Plan nor is any access recorded in the Survey Records in Form I and XIV of land under Survey No.39/4B.
 - d). That the property bearing Survey No.39/5 (Plaintiffs' property) is a garden land with a hut standing thereon, for storing of agricultural implements, and it rejects Plaintiffs case for temporary injunction holding that the land is not landlocked.

SUBMISSIONS:

9. It is the submission of Learned Advocate, Mr. Costa Frias, for the Appellants that the impugned Order suffers from perversity, for non-consideration of the relevant material on record, this material being the landlocked mutation of plot under Survey No.39/5 in relation to the original plot 39/4 and in relation to the sub-divided Survey 39/4 into plot 39/4-B. According to the Counsel, the perversity in the Judgment is further seen from the fact that it has not taken into consideration the affidavit of the original owner and predecessor-in-

title of the Plaintiffs' plot and in the complete absence of pleadings in defence that the Plaintiffs' plot has any alternate access. It is also submitted that the Court has totally failed to consider that the northern boundary of the Plaintiffs' plot was a nullah, allowing for access to this plot exclusively from the land that originally surrounded it under survey No.39/4.

10. Opposing the submissions, the Learned Senior Advocate Mr. Padiyar for Respondents No.1 and 2 submitted that the Sale Deed dated 13.08.2020 from the original owners of plot in the Survey No.39/5 to the Plaintiffs does not show their land to be bounded on the South with land under Survey No.39/4-B belonging to Defendants No.3 and 4 but shows land under survey no.39/4 to be its southern boundary. He further argues that the Sale Deed does not refer to any access to Survey no. 39/4 or Survey No.39/4-B nor are there pleadings in the Plaint giving the plot boundaries of the Plaintiff. In support of the impugned Order, Shri Padiyar submits that there is no perversity in the findings arrived at by the trial Court and this is not a case for an interference in appellate jurisdiction, which is narrow and does not permit the Appellate Court to take a different view just because such a view is possible.
11. When this matter first came up for admission, considering that the Defendants No.1 and 2 had denied the report filed by Engineer Shirwaikar, this Court felt it appropriate to appoint a Commissioner, with the consent of the parties, to visit the site and place a report

before the Court to enable a proper understanding of the site conditions. Engineer Mr. Allwyn Crasto was appointed with the consent of the parties to conduct the site survey, and he has placed before the Court an exhaustive Inspection Report dated 31.07.2025. The Report concludes that the land under Survey No.39/5 belonging to the Plaintiffs is not accessible from the north and the eastern sides, as there is a nullah on the North and a compound wall on the East. The Report further concludes that there is a rubble wall on the south and west of land under Survey No.39/5, in the area shaded in blue on the Plan, next to which there is a water drain which drains the water from land under 39/4 and 39/5 into the nullah, making access to the plot under 39/5 difficult from its western side.

12. The Report further states that there is a 3 metre wide setback between the eastern boundary of land under Survey No.39/4-B (belonging to Defendants No.1 and 2) and the structure constructed by Defendants 1 and 2 which is the alleged access claimed by the Plaintiffs. The Report avers that such access exists at site and was found during the inspection. The Report also states that there is no other access available to the property of Plaintiffs under Survey No.39/5. The Report has annexed photographs of the site and the photograph at page 12 of the Report clearly depicts the access through the Plaintiffs' plot which is referred to by said Engineer. From this Report, it can be clearly gathered that the only access available to the property of the Plaintiffs under Survey No.39/5 is the access along the western boundary of land under Survey No.39/4-B belonging to Defendants

No.1 and 2 which is the 3 metre setback shown on the approved Plan, on the basis of which the Defendants No.1 and 2 obtained construction licence from the Village Panchayat and from the Town Planning Department. This is the suit access claimed in the Plaint in paragraph 4, and which is also shown on the Report of Engineer Shirwaikar in hatched lines in red colour.

13. Perusal of the Affidavit filed by Mrs. Conceicao Vas, who was 74 years old in the year 2024 when the Suit was filed, and who was the owner of land under Survey No.39/5 sold to the Plaintiffs on 13.08.2020, avers that the property was in fact sold to the Plaintiffs by the said Sale Deed, and that there was an access which she and her family members used for ingress and egress to the property under Survey No.39/5, through property under Survey No.39/4-B (purchased by Defendants No.1 and 2); she further states in paragraphs 3 and 4 of her Affidavit that this access was derived through the property originally belonging to late Loyola Furtado and for part of property under Survey No.39/4. She also states that the access was used by her and her family members and the same has been depicted on the Plan of Engineer Shri Shashank Shirwaikar. The Affidavit by the predecessor-in-title claims the existence of an access to the property under Survey No.39/5 through the property originally surveyed under Survey No.39/4, along in line specified in the Report of Engineer Shirwaikar.
14. Perusal of the Survey Plan produced by the Plaintiffs would show that

Survey No.39/5 is totally landlocked in the north-eastern corner of Survey No.39/4. Survey No.39/4 belonging to the Defendant No.5, as it originally stood, is a large property, which includes sub-division 39/4-B created in 2017, and there was no road passing through this land. Obviously, therefore, as the land originally stood, prior to all the sub-divisions being created and the Deeds of Sale being executed in favour of the Plaintiffs and Defendants No.1 and 2, Survey No.39/5 was fully landlocked and surrounded on two sides, i.e. the West and on the South by land under Survey No.39/4, and on the North, by the nullah. It is not in dispute that along the entire Eastern border from both Survey No.39/5 (Plaintiffs' property) and Survey No.39/4-B, there is a boundary wall, thereby rendering land under Survey No.39/5 fully landlocked.

15. The trial Court has totally missed out the fact that land under Survey No.39/5 was fully landlocked. It has not considered the Survey Plan as it stood prior to the creation of the sub-division and prior to the road coming into existence, which bifurcated land under Survey No. 39/4 belonging to Defendant No.5 into two parcels; the road, after dividing the land runs along the southern boundary of land under Survey No.39/4-B which was created only in the year 2017 by a sub-division. Thus, the landlocked property of the Plaintiffs under sub-division 5 of Survey No.39 would perhaps derive its access through Survey No.39/4 towards the West or through the triangular strip of Survey No.39/4 and through plot under Survey No.39/4-B to its south.

16. Considering the fact that the Village Panchayat has not taken any stand of an access existing to plot under sub-division 5 of Survey 39, and nor has the original Defendant No.5 who was/is owner of Survey No.39/4, filed any Written Statement, nor has the predecessor-in-title of Defendants No.1 and 2 filed any Written Statement or affidavit, the uncontroverted averments made by the original owner of the Plaintiffs' plot under Survey No.39/5 must be accepted as correct. The affiant Conceicao Vas, aged 74 years, has vouched for the fact that the access to the Plaintiffs' property prior to its sale to the Plaintiffs was always derived through the plot of Defendants 1 and 2 under sub-division 4/D and earlier, before its creation, to the south of survey no.39/5 to 39/4. The trial Court, in the impugned judgment made no reference whatsoever to the affidavit of Conceicao Vas in relation to the access claimed. It has also not examined on the basis of the Plan, the Report of the Engineer and the affidavit whether land under Survey No.39/5 was in fact totally landlocked. Instead, it has arrived at its conclusions purely based upon the non-existence of a traditional access being depicted on a Government Survey Plan or in the Survey Records in Form I and XIV. It relied upon the presumptions under Section 105 of the Land Revenue Code to hold that the non-existence of the access in the Survey was enough to conclude that such an access in fact would not exist.
17. This finding is perverse and in fact contrary even to the provisions under Section 105 of the Code. The only presumption that could be drawn under Section 105 of the Land Revenue Code was as to the

correctness of the Survey Record, that is to say, the names of the occupants or holders of rights and the areas of the land or the nature of the land. Survey Records generally do not depict an easementary right or an easement claimed by a party. In the present case, the finding that the land under Survey No.39/5 was not landlocked itself is perverse, as the Plan is clearly not been considered in its correct perspective.

18. The Trial Court has further gone on to hold that no part of land under Survey No.39/4-B touches the boundary of the Plaintiffs' property under Survey No.39/5. If one peruses the original Plan, the land under Survey No.39/4 fully surrounds the plot under Survey No.39/5 from two sides. It is only after sub-division was created that a narrow strip of land under Survey No.39/4 continue to abut a portion of the plot under Survey No.39/5, and was wedged between that plot and the Defendants' plot. However, on perusing the Survey Plan, land under 39/4-B meets the boundary of land under Survey No.39/5 along the eastern boundary. The access claimed by the Plaintiffs, therefore, traverses the wedge between the two plots under Survey No.39/4, and moves further south to the newly constructed road on the southern side of the land under Survey No.39/4-B. Comparing the Plan of Engineer Shirwaikar with the Plan of the Commissioner appointed by this Court, and the Plan under which the licence has been issued by the Panchayat, clearly all three Plans depict an open area roughly of the width 3 metres along the entire western boundary of the land of Defendants No.1 and 2 under Survey No.39/4. Clearly,

therefore, all these documents depict the only access available at site to the Plaintiffs' plot. The trial Court has not considered the Plans from this perspective. There could be no other conclusion that the trial Court could have arrived at except that the Plaintiffs' plot was landlocked and the only access available, considering that the Defendants No.1 and 2 had constructed their residential house leaving a setback of 3metres on the eastern side was in fact the access to the Plaintiffs' plot.

19. For the reasons state above, considering that the trial Court has clearly rendered findings as to the existence of the access and the fact that Plaintiffs' plot is landlocked which are perverse, and without considering the documents on record, the impugned Order would have to be quashed and set aside. Having concluded the existence of an access and the fact that the Plaintiffs' property under Survey No.39/5 is landlocked, the application for temporary injunction at Exhibit 4 would have to be granted in its totality.
20. Consequently, the Appeal from Order is allowed. The impugned Order dated 24.09.2024 stands quashed and set aside, and the application at Exhibit 4 on the file of the trial Court is granted. There shall be an order of temporary injunction which shall operate till the disposal of the Suit, restraining the Defendants No.1 and 2 from carrying out construction work over, or blocking the Plaintiffs' access in land under Survey No.39/4-B and 39/4 into land under Survey No.39/5 belonging to the Plaintiffs, from the main road to its south;

the temporary injunction shall operate over the area etched in red in the Report of Engineer Shri Shashank Shirwaikar placed before the trial Court, which has been reiterated in the Report of Engineer Allwyn Crasto, filed before this Court. To avoid any ambiguity or doubt, an extra copy of the Report of Shri Allwyn Crasto, which is in the file of this Court, shall be placed by the Plaintiffs in the record of the trial Court.

21. The Appeal from Order stands disposed of in the above terms. No costs.
22. In view of the disposal of the Appeal, the Civil Applications and all other Miscellaneous Civil Applications stand disposed of.
23. It is made clear that the observations made in this Order are purely for the purpose of arriving at conclusions at the prima facie stage of hearing an application for temporary injunction, and the Suit shall be disposed of on evidence, on its own merits, without being influenced by the observations made herein.

VALMIKI MENEZES, J.