



Suzana

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.3 OF 2026

CASMIRO NAZARETH AND ANR

... APPELLANTS

Versus

LUCIA PINTO DSOUZA AND ANR

... RESPONDENTS

Mr Deepak Gaonkar, Advocate for the Appellants.

Mr. A. F. Diniz, Senior Advocate with Mr. Ryan Da Piedade Menezes and Ms. Stephanie Alvares, Advocates for Respondents.

CORAM:- VALMIKI MENEZES, J.

DATED :- 16th January, 2026

ORAL ORDER:

1. Registry to waive objections and register the Appeal from Order.
2. This is an Appeal under Order 43 of the Code of Civil Procedure, 1908, against the Order dated 15.12.2025 rejecting the Plaintiffs' application for a temporary injunction.
3. The main contentions raised in the Appeal are that the trial Court, whilst dismissing the application for injunction, has failed to consider two crucial documents. The first document, which, according to the Appellants, the trial Court failed to consider, was a plan of a Surveyor in which the site conditions of the suit property were depicted. The

second set of documents, which the Appellants contend were not considered by the trial Court, were photographs which were produced by the Plaintiffs to show that around the date of filing of the Suit, the suit property was occupied by and was in possession of the Plaintiff.

4. Heard learned Advocates for the parties.

The claim made in the Plaint is that the Plaintiffs have been in adverse possession of the suit property, which admeasures 248 sq.metres, of a larger land under Survey No.407/3-B of Village Santa Cruz. The Plaintiffs claim to be in adverse possession of this piece of land since 1983, i.e. around 40 years prior to the filing of the Suit. To make out a prima facie case whilst seeking a temporary injunction, the Applicants have produced, apart from the averments, two documents (a private Surveyor's Plan which is dated 17.01.2025) and the photographs, the Survey Plan of the larger property under Survey No.407/3 and 407/3-B. It is the Plaintiffs' case that, as in the recital of the Sale Deed dated 28.03.2012, he was a Mundkar of the dwelling house existing originally in land under Survey No.407/3, which was purchased by the said Sale Deed from the predecessor-in-title and the Defendants. Pursuant to the Sale Deed, the area purchased thereunder was partitioned and a fresh Survey No.407/3-B was allotted to the larger area retained by the vendors of the Plaintiffs' property.

The Plaintiffs then claim that they continued in occupation by way of adverse possession of the suit property admeasuring 248 sq.metres by using the same to park their car and to use the access across this area. The cause of action for filing the Suit as pleaded in the Plaint is the

attempt by the Defendants to utilise the suit property as part of a larger development of land under Survey No.407/3-B, for which they have obtained the licence and approvals from the Town and Country Planning Department. It is the Plaintiffs' case that if the Defendants are permitted to utilise the suit property as a parking area, as depicted in their approved Plan, they would interfere with the Plaintiffs' possession. Hence, the application for temporary injunction.

5. The trial Court has considered the pleadings in the Plaint and has held that the Plaintiffs have not made out any prima facie case for grant of temporary injunction. It is not that the trial Court has not considered the Plan drawn by the Surveyor, but after considering the Plan, has refused to rely upon its contents since it was not supported by an affidavit and by a Certificate under Section 65B of the Indian Evidence Act, 1872. So also, the trial Court has considered the photographs but has refused to rely upon them for deciding the application, again on the grounds of the non-accompaniment by a Certificate under Section 65B of the Evidence Act.

6. Even if one considers the contents of the Plan drawn by the Surveyor, the Plan only depicts the existence of a septic tank, which the Plaintiffs claim to be existing in the suit property. In addition, the Plan depicts a compound wall and an access across the suit property along with a shed therein. Reliance has been placed on the photographs to show that these structures exist in the suit property.

The least that would be expected of the Plaintiffs to bolster their case of adverse possession over the suit property, at the interim stage, was to file an affidavit of the Surveyor stating his observations at the site. There is not even a written report of the Surveyor accompanying the Plan.

7. The claim of the Plaintiffs is to adverse possession of the suit property. The very date of the possession of the property was adverse to that of the Plaintiffs as pleaded in the Plaint is the year 1983. If that be the case, apart from pleadings, it would be necessary for the Plaintiffs, at least for pressing their application, was to establish various acts of possession over the suit property from the year 1983 and further establish that such acts were hostile, open and to the knowledge of the Defendants. Even on perusal of the Plaint, there appear to be no specific acts setting out details of how adverse possession of the suit property was exercised from 1983, and most of the averments appear to refer to facts which are of recent origin. If the photographs relied upon are taken immediately prior to filing of the suit, cannot establish, as in the manner required by law, the adverse possession of the Plaintiffs over the suit property over a long period of time.

8. What is even more pertinent to note is that the Plaintiffs have chosen to purchase the property in the year 2012 in Survey No.407/3, where their dwelling house stands; which admeasures 310 sq. metres. The sale is of a specific piece of land, and what is surprising is that in the Sale Deed, there seems to be no recital or mention of the fact that the Plaintiffs were in occupation of an area beyond the area purchased

by them. It would stand to reason that any prudent person purchasing an area which belongs to the Defendants would purchase in addition, the area in their possession since the year 1983. This appears to be the claim in the Plaint, but there is no explanation offered as to why the Plaintiffs purchased 310 sq.metres, leaving out the area which they claim was in their possession almost 40 years prior to the Sale Deed being executed.

9. On going through the Order of the trial Court, the Order appears to be passed on material before the Court and cannot be termed perverse nor can the view taken therein be considered to be one which is not passed on the material before the Court. It is well settled that under Order 43, Rule 1(r) of the Code of Civil Procedure, the Court of Appeal would not interfere with the discretion exercised by the trial Court if it is passed upon the material before it; the Appellate Court may also not interfere with this discretion, even if another view were possible. The parameters for interfering with the discretion of the trial Court whilst exercising its powers under Order 39 of the Code of Civil Procedure are well settled. Applying these principles, in the case before me, no ground is made out for interference in the said Order.

Consequently, the Appeal stands dismissed. No costs.

VALMIKI MENEZES, J.