

IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

CIVIL REVISION APPLICATION NO. 195 OF 2001

Shri Sucdo Naik,
House No.345(O), 488(N),
Dhaktem Bhatt, Dongrim,Goa. ... Applicant.

versus

1. Mr. Shambu V. Naik,
major,
2. Mr. Dashrath V. Naik,
r/o House No.345(O),
488(N), Dhaktem Bhatt,
Dongrim, Goa. ... Respondents.

Mrs. A. A. Agni, Advocate for the Applicant.

Mr. A. R. Kantak with Mr. Irshad Aga, Advocates for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 3RD MAY, 2002.

ORAL JUDGMENT

This revision has been filed against the Judgement, dated 25th April, 2001, passed by the District and Sessions Judge, Panaji, in Miscellaneous Civil Appeal No. 201 of 2000. By the Judgement under challenge, the learned lower appellate Court had allowed the Appeal filed by the Respondents herein and had allowed the application for temporary injunction, restraining the Applicant herein, his servants, agents or any other person acting on his behalf from carrying out any construction in the suit property till the decision of the suit by the Trial Court.

2. The brief facts necessary for the decision of this Appeal are set out hereunder:-

The Respondents herein are the Original Plaintiffs who had filed a suit for mandatory and temporary injunction, being Regular Civil Suit No.66/2000/C with an application for temporary injunction which was registered as Civil Miscellaneous Application No.98/2000/C, before the Civil Judge, Junior Division, Panaji.

3. In the suit, it was averred that in the property admeasuring about 775 sq. metres, is situated a residential house. The said residential house is a mundkarial house recorded in the name of Smt. Gokul Venkatesh Naik. Smt. Gokul Venkatesh Naik expired on 5th December, 1983 and on her demise, all her rights and interests in the suit house devolved on the Plaintiffs and the Defendants. Incidentally, it may be stated that the Plaintiffs and the Defendants are brothers. Thus, the Plaintiffs and the Defendants, it is alleged became the co-owners. It is further stated in the plaint that the western portion of the said house is in possession of the Plaintiffs and the eastern portion of the house is in possession of the Defendants. On 30th March, 2000, the Defendants without the consent and permission of the Plaintiffs commenced laying the foundation for the

purpose of constructing a room behind the house of the Plaintiffs towards the northern side of the house of the Plaintiffs and thereby damaged the mud wall of the portion of the house in possession of the Plaintiffs. It is also averred in the plaint that the Plaintiffs lodged a complaint before the Village Panchayat of Azzosim, Mandur, Tiswadi Taluka and on the basis of the said complaint, after inspection, the Village Panchayat issued an Order cum notice directing the Defendant to stop further construction and to show cause as to why the construction should not be demolished. It is also averred in the plaint that the Defendant has constructed two walls of laterite stones.

4. The Defendant filed his Written Statement. In the Written Statement, the Defendant denied that whilst digging, the Defendant has damaged the mud walls of the Plaintiffs. It was also contended that the Defendant is carrying out only the reconstruction of the earlier walls without harming or touching the existing walls of the portion of the house occupied by the Plaintiffs.

5. On the basis of the pleadings of the parties, the learned Civil Judge, Junior Division, Panaji, by his Order dated 30th November, 2000, dismissed the application for temporary injunction filed by the Plaintiffs. The learned Trial Court came to the

conclusion that by consent, the parties to the suit were occupying separate and distinct entities which were in the possession of the respective parties. The learned Trial Court also came to the conclusion that the sketch drawn by the Village Panchayat shows that the suit room is not touching the common wall of the Plaintiffs and the Defendants. The learned Trial Court on the basis of the pleadings came to a conclusion that the Defendant was reconstructing his own dilapidated construction of his house. The learned Trial Court came to the conclusion that the balance of convenience did not tilt in favour of the Plaintiffs and the Plaintiffs had failed to establish a prima facie case and, therefore, did not deserve the relief of temporary injunction as prayed.

6. Being aggrieved by the aforesaid Order of the Civil Judge, Junior Division, Panaji, the Plaintiffs filed Miscellaneous Civil Application No.201 of 2000 before the District and Sessions Judge, Panaji. The Appeal of the Plaintiffs was registered as Miscellaneous Civil Appeal No.201 of 2000 and by its Judgment dated 25th April, 2001, the learned District and Sessions Judge, Panaji, allowed the Appeal. With reference to the observations of the learned Trial Court that the Defendant was reconstructing the dilapidated portion of its house, the learned lower appellate Court observed that the approach of the learned Trial Court was

erroneous. The learned lower appellate Court held that as the mundkarial house had not been purchased either by the Plaintiffs or Defendants from the Bhatkar, the Defendant was not able to carry out any construction without the consent of the Plaintiffs as well as of the Bhatkar. The learned lower appellate Court, therefore, allowed the Appeal filed by the Plaintiffs.

7. Being aggrieved by the aforesaid Judgment, the Applicant/Original Defendant has filed this Civil Revision Application.

8. Mrs. A. A. Agni, the learned Advocate appearing for the Applicant has urged before me that the learned lower appellate Court has not given reasons for holding that the Order of the learned Trial Court was erroneous. She has also urged that the learned lower appellate Court has not recorded a finding of fact contrary to what the learned Trial Court had concluded. According to her, the learned Trial Court, on the basis of the pleadings, had come to the conclusion that the Defendant was reconstructing the dilapidated portion of the walls of the house in his possession. According to her, the learned lower appellate Court has not demonstrated in its Judgment as to how this finding of fact arrived at by the learned Trial Court was erroneous. She has further urged that the learned lower appellate

Court has also not stated in its Judgment that the Defendant was carrying out a totally new construction.

9. Mr. A. R. Kantak, the learned Advocate appearing for the Respondents/Original Plaintiffs has urged before me that the Judgment of the learned lower appellate Court is a well reasoned Judgment which does not recollect any interference. He has also urged that the learned lower appellate Court has given adequate reasons for taking a view different from that of the learned Trial Court.

10. The learned Trial Court, on the basis of the pleadings had arrived at a conclusion that the Defendant was reconstructing the dilapidated portion of the suit house in its possession. The learned Trial Court had also come to the conclusion that the Plaintiffs had failed to make out a prima facie case for the grant of injunction. The learned lower appellate Court, is certainly entitled to take a different view from the view taken by the learned Trial Court. However, the Judgment of the learned lower appellate Court should give reasons as to why it is taking a different view from the view taken by the learned Trial Court. Unless the Judgment of the learned Trial Court is perverse or is shown to have been based on certain pleadings which have not been taken into consideration, the learned lower appellate Court

should not normally interfere. In the present case, the learned lower appellate Court has not recorded a finding that the finding of the learned Trial Court that the Defendant was reconstructing the dilapidated portion of the house is erroneous. The learned lower appellate Court seems to have proceeded on the basis that the Defendant was not entitled to undertake any construction without the prior permission of the Bhatkar. If, the Defendant was only reconstructing the dilapidated portion of the house, the learned lower appellate Court was not justified in holding that the permission of the Bhatkar was necessary. It is only in the event that if any fresh construction was being carried out by the Defendants that the prior permission of the Bhatkar would be necessary and in any event, it was for the Bhatkar to complain that no prior permission from him had been obtained. The learned lower appellate Court has also not addressed itself to the existence of the prima facie case or the balance of convenience. The recording of the finding of prima facie case and balance of convenience is sine qua non before granting or refusing an injunction. The learned lower appellate Court has held that the Plaintiffs were entitled for the injunction only on the ground that the Defendant had not obtained the prior permission of the Bhatkar. According to me, the Judgment of the learned lower appellate Court cannot be sustained. The learned Trial Court has given a reasoned order and

has recorded a finding that the Defendant was reconstructing the dilapidated portion of the house. There is nothing on record to suggest that the finding of the learned Trial Court on this behalf was erroneous. The learned lower appellate Court in its Judgement has not been able to establish that the said finding of the learned Trial Court was erroneous.

11. For the aforesaid reasons, therefore, the Civil Revision Application is allowed and the Judgement of the learned District and Sessions Judge, Panaji, dated 25th April, 2001, in Miscellaneous Civil Appeal No.201 of 2000 is hereby quashed and set aside.

12. Civil Revision Application is allowed with no order as to costs.

(P. V. HARDAS)
JUDGE