

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 36 OF 2003
AND CIVIL APPLICATION NO. 144 OF 2003

1. Suman Mohan Chodankar
alias Smt. Supriya V.
Aryamane and her husband
2. Shri Viyajkumar P. Aryamane,
both r/o Ashtavinayak Appts.,
Block no.31, 4th Floor,
"B" side, Lokmanyagar,
Thane (West),
3. Ameena Mohan Chodankar alias
Smt. Supriya P. Vernekar and
her husband,
4. Shri Prabhakar S. Vernekar,
both r/o House No.16,
Bicholim Market,
Bicholim, Goa. ..Appellants.

Versus

1. Smt. Carolina A. Fernandes
widow of late Antonio
Fernandes, major in age,
housewife,
2. Mr. Agnelo Fernandes,
major in age, service,
3. Miss Maria Fernandes,
major in age, household
worker,
4. Mr.Domnic Fernandes,
major in age, unemployed,
5. Mr. Minino Fernandes,
major in age, unemployed,
all r/o Firguem Bhat,
Goa Velha, Tiswadi, Goa. ..Respondents.

Shri R. G.Ramani, advocate for the appellants.

Shri E. Dias, advocate for the respondents.

CORAM : F. I. REBELLO, J,

DATE : 31st July, 2003.

ORAL ORDER

Heard parties. The Appeal is directed against the Order dated 30th December, 2002, whereby the trial Court has rejected the application for temporary injunction as prayed for by the appellants herein. The suit by the appellants is for various reliefs amongst them for a declaration that they are co-owners in joint possession of the suit property and for injunction in the form of mandatory injunction as also permanent injunction against defendants no. 8 to 13. An application for temporary injunction was also prayed for. The trial Court on considering the pleadings has been pleased to reject the application for temporary injunction. The plea of the respondents is that the structure is a mundkarial house and that being the case, no injunction could be granted in respect of mundkarial structures. It was also contended that they are not interfering with the rest of the property.

2. the suit by the appellants herein was on the basis that the respondents herein had put up illegal structures beyond the house where they claimed to be mundkars and, therefore, apprehending further encroachment of the property the suit for injunction was filed alongwith the application for temporary injunction. Both the parties have filed respective plans showing the structures. There is admittedly a difference in the plans as submitted regarding the suit structures. It is also contended on

behalf of the respondents that apart from the suit structures there is an access to the house as also they are using water from the well. Considering the pleadings on record and that such structures were already existing, the trial Court was right in considering the plea insofar as existing structures are concerned. However, the relief insofar as to the rest of the property is concerned ought to have been granted. It will not be possible for this Court, considering the conflicting survey plans on record, to grant the relief. Appropriate remedy in the circumstances would be to set aside the order and remand the matter with the following directions:-

(i) The trial Court is directed to appoint a Commissioner to visit the site and submit on commission, a report of the structures as they exist and also of the well and traditional access as claimed by the respondents herein;

(ii) In respect of the mundkarial structures claimed by the respondents as existing structures and the access, no injunction can be granted;

(iii) The trial Court insofar as the well is concerned to hear the parties and dispose off the same according to law;

(iv) Injunction to be considered in respect of the rest of the property, considering the pleas of the parties.

Appeal From Order alongwith the Civil Application No.144 of 2003 are disposed of. the Trial Court is directed to dispose of the matter within three months from today.

F. I. REBELLO, J.

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