



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.70 OF 2024

MR. RAGHUVIR SITARAM SAWANT

son of Sitaram Sawant, 59 Years of age,
service, married, Resident of H.No. 394/A/2,
Sawant wada, Oxelbag, Dhargal, Pernem, Goa ...PETITIONER

VERSUS

1. **MR. DEELIP LAXMAN SAWANT** alias
Deelip Tukaram Sawant, Son of late
Tukaram Sawant, 58 years of age, married

2. **Mrs. DEEPAVATI DEELIP SWANT**
Wife of Mr.Deelip Tukaram Sawant,
58 years of age, married, housewife,
Both Residents of House no. 393,
Sawant Wada Oxelbag, Dhargal
Pernem Goa.

...RESPONDENTS

Mr. Arjun F. Naik, Advocate for the Petitioners
Mr. Gaurish Malik, Advocate for the Respondents.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 25th September, 2024

ORAL JUDGMENT

1. Rule.
2. Rule is made returnable forthwith.

3. The matter is taken up for final disposal with consent of the parties.

4. Heard Mr. Naik learned counsel for the Petitioner and Mr. Malik learned counsel for the Respondent.

5. In the present proceedings, the learned Trial Court after considering the material before it, granted injunction vide order dated 10/03/2022, with a specific relief that the Respondents/Defendants are restrained from carrying out further construction in the suit property till the disposal of the suit.

6. Petitioner/Plaintiff filed the suit with a specific averment in the plaint that the Respondents/Defendants started a new construction in the suit plot which is by the side of the house of the Plaintiff, without obtaining any permission from the concerned authorities.

7. After granting of the temporary injunction by the Trial Court, the Respondents filed an appeal wherein the learned First Appellate Court reversed the order of the

learned Trial Court vide impugned order dated 03/01/2024, which is challenged in the present proceedings.

8. Mr. Naik submits that the Plaintiff is claiming to be Tenant of the suit property whereas Mr. Malik appearing for the Respondent submits that the Plaintiff is not having any such right.

9. However, it is a fact that the Plaintiff is having his house in the suit property and by the side of the said house, a new construction activity started on behalf of the Defendants which triggered in filing of the Civil Suit. The photographs produced on record would clearly go to show that a completely new construction activity started in the suit plot.

10. Mr. Malik appearing for the Respondent/Defendant fairly admit that no permission was obtained by the Defendants to carry out any construction in the said plot. He submits that the even the construction of the Plaintiff/Appellants is illegal.

11. Mr. Malik now submits that the Village Panchayat has already issued a Stop Work Notice and restrained the Defendants from carrying out any construction.

12. The learned Trial Court after considering the material observed that a prima facie case is made out since a totally new and illegal construction was being carried out in the suit plot. The question as to whether the Plaintiff is Tenant or not will have to be gone into, however, the First Appellate Court and that too on some technical grounds reversed a well reasoned order of the Trial Court.

13. The Defendants admit that they are not having any permission from the competent authorities to carry out construction. The First and foremost step is to stop such illegal construction. It is no doubt true that the Village Panchayat has already taken action against the Defendant and issued a Stop Work Order. That apart, when the civil proceedings are pending and a temporary injunction was granted by the Trial Court on the ground that it is completely illegal activity carried out by the Defendant and that too in

neighbourhood of the Plaintiff, the same ought not to have been disturbed on the technical plea of not giving details of the encroachment as alleged.

14. The learned First Appellate Court completely lost sight that an illegal construction is coming up at the site which requires immediate restraint since the Defendant failed to obtain requisite permissions from the concerned Department.

15. Accordingly, impugned order passed by the First Appellate Court requires interference in the writ jurisdiction.

16. The impugned order passed by the First Appellate Court is therefore, quashed and set aside, whereas the order passed by the learned Trial Court is restored.

17. Rule is made absolute in the above terms.

18. Petition stands disposed of.

BHARAT P. DESHPANDE, J.