

**IN THE HIGH COURT OF BOMBAY, AT GOA  
CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO.378 OF 2023**

1. Madan @ Manjinath Padmanabh Bhat  
s/o.Padmanabh Shridhar Bhat,  
Age 60 years, Occ.Priest, R/o.at H.No.493,  
Near Mahalasa Temple, Mardol, Goa.

2. Mrs.Padma Manjinath Bhat  
w/o.Madan @ Manjinath Padmanabh Bhat,  
Age 55 years, Occ.House wife, R/o.at H.No.493,  
Near Mahalasa Temple, Mardol, Goa.

3. Premanand @ Maruti Padmanabh Bhat  
s/o.Padmanabh Bhat, Age 65 years, Occ.Priest,  
R/o.at H.No.493, Near Mahalasa Temple,  
Mardol, Goa.

4. Smt.Mohini Premanand Bhat  
w/o.Premanand @ Maruti Padmanabh Bhat,  
Age 63 years, Occ.House wife,  
R/o.at H.No.493, Near Mahalasa Temple,  
Mardol, Goa.

Petitioners

**VERSUS**

Mazania of Devalaya of Mahalasa of  
Mardol at Mardol, Taluka Ponda, Goa  
through Managing Committee, Mardol,  
Ponda, Goa.

Respondent

Mr.S.D.Lotlikar, Senior Advocate, with Mr.T.Sequeira, Mr.S.Sawant,  
Ms.P.Volvoikar and Ms.Sailee Keny, Advocates for Petitioners.

Mr.Parag Rao with Mr.A.Parrikar, Mr.Ajay Menon, Ms.Swamy Drago,  
Ms.Meghna Naik, Advocates for Respondent.

**CORAM : PRAKASH D. NAIK, J.**

Date of Reserving the Judgment : 7<sup>th</sup> November 2023

Date of Pronouncing the Judgment : 25<sup>th</sup> April 2024

**JUDGMENT :-**

1. Petitioners have invoked Article 227 of Constitution of India and challenged the Order dated 1<sup>st</sup> July 2022 passed by District Judge-II, Panaji, in Miscellaneous Civil Appeal No.49 of 2022 and the Order dated 9<sup>th</sup> May 2022 passed by learned Civil Judge, Junior Division, `B' Court, Ponda, Goa in Regular Civil Suit No.25 of 2022.

2. Civil Suit No.25/2022/B was lodged by Respondent before the Court of Civil Judge, Senior Division, seeking judgment and decree of permanent injunction against Petitioners/Defendants, their family members, agents, servants and all persons claiming under the Petitioners and restraining them from commencing, doing, continuing, carrying on any kind of construction in suit property or any part thereof and/or plucking coconuts from any coconut trees existing in the suit property. Petitioners were the defendants in the suit.

3. The case of the Respondent/Plaintiff in the suit can be summarized as under :

(a) Plaintiff is the owner and in possession of the landed property named "Sthal Kutumbana" situated at Priol village of Ponda Taluka, Goa within limits of Village Panchayat of Veling Priol and Cuncolem and identified in the record of rights of Priol village of Ponda Taluka under Survey No.1, Sub-Division 1;

(b) The name of Respondent is shown in occupation column of the record of rights under Survey no.1/1, Forms 1 and 14 of said property. In the Taluka Land Revenue Records, the property is enrolled under Matriz Nos.635, 689, 691 and 692. The property is

inscribed in the name of Respondent;

(c) In a part of the suit property there is a house belonging to Respondent, which for the purpose of house tax, recorded as House No.493 in the records of Village Panchayat of Village Veling, Priol and Cuncollem. The said house was granted to the then temple Priest Padmanabh Manjinath Bhat who was the great grandfather of Defendant nos.1 and 3 for his residence for proper discharge of his duties as Priest of temple;

(d) Padmanabh Bhat expired and his descendants started rendering same services as Priest in the Plaintiff temple and in similar way started occupying the said house. The house was recorded in the name of Padmanabh Bhat in house tax records of Village Panchayat of Mardol. The other Defendants are residing in the suit house. The name of Defendants does not appear in any column of Forms 1 and 14 of suit property;

(e) Vide application dated 12<sup>th</sup> April 2011, Petitioner no.1/Defendant no.1 sought permission from Plaintiff to repair the suit house. Vide another application dated 5<sup>th</sup> September 2015, the Defendant no.1 again sought permission from Plaintiff in respect of the suit house;

(f) In the aforesaid applications Petitioner no.1/Defendant no.1 was claiming ownership of the suit house which in fact belonged to the Plaintiff/Respondent. Due to false claim of Petitioner no.1, Respondent found it difficult to grant permission sought by Petitioner no.1 since the same would tantamount to acknowledging non existing right claimed by Petitioner no.1 to the suit house;

(g) The Mahajans who attended general body meeting convened for considering the request of Petitioner no.1, were not agreeable to accede to the request of Petitioner no.1 and as a result the issue of suit house remained to be resolved;

(h) Respondent addressed a letter dated 14<sup>th</sup> September 2015 to Petitioner no.1. Petitioner no.1 submitted another letter on 21<sup>st</sup> March 2021 seeking NOC for reconstruction of suit house;

(i) From the tenor of letters issued by Petitioner no.1 it was obvious that claim of ownership of Petitioner no.1 was only to the suit house but Petitioner no.1 was consciously acknowledging the Respondent's ownership of suit property;

(j) The Managing Committee was in principle agreeable to grant Petitioner no.1 permission sought by him but subject to certain conditions which were required to be stipulated to protect interest of Respondent temple. With the said objective in mind, a draft agreement was prepared and placed for consideration of Mahajans at a general meeting convened for considering request of Petitioner no.1 and draft agreement was in principle approved at the meeting;

(k) The draft agreement was delivered to Petitioner no.1 for his approval. Petitioner no.1 submitted his own draft agreement and insisted on execution of agreement as per the draft agreement submitted by him;

(l) The draft agreement was not acceptable to Respondent since it did not protect interest of Respondent. Meetings were held to resolve the issues;

(m) Letter dated 14<sup>th</sup> February 2022 was addressed to

Petitioner no.1 when he commenced construction in the Respondent's property. Petitioner no.1 was requested not to indulge into illegal construction in the temple property. The Petitioners did not stop the construction;

(n) Complaint dated 23<sup>rd</sup> February 2022 was addressed to Village Panchayat Veling Priol and Cuncolem and request was made to issue a stop order in the illegal construction work which the village panchayat failed to act;

(o) Inquiries were made in the office of local village panchayat wherein it was learnt that Petitioners did not apply for any license for undertaking subject construction. Inquiries were made in the office of Town and Country Planning Department and it was found that Petitioners did not apply for any permission;

(p) Without permission of Respondent the Petitioners cannot apply for any permission or construction license from local village panchayat of Veling-Priol Cuncolem at Mardol, Goa;

(q) In the draft agreement prepared by the Respondent there was stipulation that Respondent would render assistance to Petitioners to obtain statutory required permission for undertaking constructions;

(r) Respondent clicked photographs which show that construction undertaken by Petitioners was in progress;

(s) The construction indulged in by Petitioners is in violation of proprietary rights of the Respondent and without obtaining any statutory permissions and licenses for indulging in construction in suit property;

(t) Respondent also found that Petitioners were plucking coconuts from coconut plantation existing in the suit property. The Petitioners have no right to pluck coconuts from coconut trees existing in the suit property which belongs to Respondent;

(u) Respondent is entitled for permanent injunction restraining the Petitioners from carrying on any construction in Respondent's property and/or plucking coconuts from coconut trees and/or any of the fruits of any of the fruit bearing trees existing in the suit property.

4. The Petitioner nos.1 and 2 filed written statement on 21<sup>st</sup> March 2022.

5. The Respondent filed application for temporary injunction and sought order of temporary injunction restraining the Petitioners, their family members, agents, servants and all persons claiming under them from in any manner whatsoever commencing, doing, continuing, carrying on any kind of construction in the suit property and plucking coconuts from coconut trees existing in the suit property.

6. The learned Judge issued show cause notice to Petitioners on 19<sup>th</sup> March 2022 to show cause as to why application for temporary injunction should not be granted. The Petitioners filed reply to the application for temporary injunction and opposed grant of any relief to Respondent. Vide Order dated 21<sup>st</sup> March 2022 learned Judge directed the parties to maintain status-quo till disposal of temporary injunction application.

7. Petitioners filed appeal against the Order dated 21<sup>st</sup> March 2022 granting status-quo by relying upon Roznama dated 21<sup>st</sup> March

2022. Miscellaneous Appeal No.25 of 2022 was heard by learned District Judge on 28<sup>th</sup> March 2022. Learned Judge issued notices to the Respondent returnable on 7<sup>th</sup> April 2022. According to Petitioners, realizing that returnable date of the said appeal being June-2022, it would render infructuous the appeal, it was decided to withdraw said appeal and on the same day application for withdrawal was filed. Learned Judge vide Order dated 7<sup>th</sup> April 2022 dismissed the appeal as withdrawn.

8. Petitioners preferred Writ Petition No.866 of 2022 before this Court. The petition was disposed off vide Order dated 23<sup>rd</sup> April 2022 directing the Trial Court to hear the application for temporary injunction on merits on 3<sup>rd</sup> May 2022.

9. Learned Civil Judge vide order dated 9<sup>th</sup> May 2022 allowed the application for temporary injunction in terms of prayer clause (a) of application and directed that Petitioners, their family members, agents, servants, executors, administrators and/or any person or persons acting on their behalf were restrained from interfering and/or carrying out any work and/or plucking fruits from any of the fruit bearing trees and/or construction of suit house situated in the suit property or any part thereof.

10. Petitioners preferred Appeal challenging Order dated 9<sup>th</sup> May 2022 which was registered as Miscellaneous Civil Appeal No.49 of 2022. Vide Order dated 30<sup>th</sup> May 2022 learned District Judge stayed the Order dated 9<sup>th</sup> May 2022 to the extent it restrained the Petitioners from carrying out construction of house till disposal of suit/appeal. The Order dated 30<sup>th</sup> May 2022 was challenged by Respondent before this Court by preferring Writ Petition No.1154 of 2022. Vide Order dated 9<sup>th</sup> June 2022 this Court modified and

clarified that said Order dated 30<sup>th</sup> May 2022 passed by learned District Judge will operate only during pendency of Miscellaneous Civil Appeal and not until disposal of Regular Civil Suit. The Appellate Court was directed to hear the appeal and dispose off the same preferably by 7<sup>th</sup> July 2022.

11. Respondent had also preferred another petition viz. Writ Petition No.217 of 2022 challenging technical clearance order and construction license granted to Petitioner. Vide Order dated 28<sup>th</sup> June 2022, Rule was issued and matter was directed to be listed for hearing.

12. Appeal preferred by Petitioners was heard by learned District Judge and vide Order dated 1<sup>st</sup> July 2022 portion of the impugned Order restraining the Petitioners from plucking the coconuts in portions of suit property given to the late grandfather of Defendant nos.1 and 3 by Respondent's Resolution dated 19<sup>th</sup> October 2005 was set aside. Portion of impugned order restraining Respondent from interfering in the suit property was set aside. The remaining portion of impugned Order was confirmed.

13. Learned Senior Advocate Mr.Lotlikar appearing for Petitioners submitted as under :

(a) The Trial Court as well as Appellate Court has committed an error in passing impugned orders;

(b) The Appellate Court has erroneously concluded that Petitioners are not Mundkars of suit house;

(c) The status of Petitioners being Mundkars was admitted by case set up by Respondent;

(d) The Court failed to take note of the fact that claim of Respondent that Petitioners had claimed to be the co-owners of the property in which suit house was situated, was misleading. Petitioners had explained clearly as to how there was no inconsistency in the stand taken by them at any stage in the pleadings;

(e) The Appellate Court adopted a perfunctory approach and failed to exercise its powers in proper perspective. The Appellate Court failed to consider the documents and contentions advanced by defendants which supported their right to reconstruct;

(f) The Order passed by Trial Court is based on misreading of the pleadings and suffers from non application of mind;

(g) The impugned Order has the effect of depriving admitted Mundkars from reconstructing their existing vulnerable house which is in dilapidated condition and thereby denying them the the statutory rights vested in them under Mundkars Act;

(h) Both the Courts below have failed to take into consideration the principles underlying grant of injunction and the concept of balance of convenience;

(i) It is not the case of Respondent that Petitioners have exceeded the plinth of house though the fact that Petitioners desire to reconstruct house was known to Respondent since 2011;

(j) Petitioners had obtained requisite permissions towards construction of house. Petitioners are in possession of premises since long. Respondent has not proved its claim of ownership in respect to the subject house;

(k) The property Survey No1/1 of Village Veling Priol and Cuncolem is a vast property which includes several other properties. These properties are components of Sthal Kutumbana or Mordi. The suit property is in exclusive possession and enjoyment of Petitioners;

(l) Suit house was constructed by late Padmanabh Bhat. It was not given to him because he was rendering services to the Respondent. The name of Padmanabh Bhat is recorded in the record of rights as owner of suit house. Petitioners never required any NOC from Respondent as they were entitled to carry out repairs in the house. The NOC was sought so that there would not be any grievance from Respondent that Petitioners have extended the suit house. Petitioners had realized the intention of Respondent as the period of license has expired and renewal period has also getting exceeded and suit house was in dilapidated condition. The work of reconstruction had commenced in February-2022;

(m) Petitioners were Mundkars of house which defense was spelt out in the defense filed by them and are entitled to reconstruction of dilapidated house without interference of Respondent as long as they find themselves to the existing plinth area;

(n) In the meeting convened by Mahajans, minutes of which are relied upon by Respondent, there is no reference to the suit house being provided to Padmanabh Bhat for his services as Priest in the house;

(o) Petitioners were paying house tax. There is no evidence to show that house was given to the Petitioners by Respondent. The orders passed by Courts below reflects non application of mind;

(p) The exercise of discretion of grant of injunction by Trial Court was arbitrary. The Court failed to consider the concept of irreparable loss and balance of convenience.

14. Mr.Lotlikar has relied upon following decisions :

- (i) Koyilerian Janaki and others Vs. Rent Collector (Munsiff) Cannanore and others (2000)9-SCC-406;
- (ii) Radheshyam Vs. Tuljaprasad and others – AIR-2007-Bom-83;
- (iii) Lark Laboratories (I) Ltd, New Delhi Vs. Medico Interpharma Ltd. Baroda – 2002-SCC OnLine-Guj-68;
- (iv) Laxmi w/o Sonu and others Vs. Sawanta Bapu – 1985-Mh.L.J.-314;
- (v) Mulla Ali Riza Muzawar and others Vs. M/s.Damodar Builders and others – 1996(2)-Goa.L.T.-177;
- (vi) Deepak Kaushal Vs. Mohan Lal Sukhadia University, Udaipur and another – 1994-SCC OnLine-Raj-458.

15. Learned advocate Mr.Parag Rao appearing for Respondent submitted that there is no infirmity in the impugned orders passed by Courts below. Petitioners have no right to construct the house. The Trial Court as well as Appellate Court have considered the need for grant of injunction which does not call for any interference. The suit house belongs to Respondent. Petitioners are not the owners of house. Petitioners have not established that they are Mundakrs of house. Petitioners have urged multiple defenses while opposing grant of injunction. The issue relating to mundkarial right is required to be decided by Mamlatdar. Petitioners had initiated proceedings before Mamlatdar seeking reliefs against Respondent. The said application was rejected. The documents on record establishes that suit house belongs to Respondent. It was provided to the grandfather of Petitioner no.1 as he was appointed as a Priest in

the temple. Petitioners cannot claim any right or ownership in respect to the said property. Suit house belongs to the Respondent. The names of Petitioners do not appear in any column of forms 1 and 14. Petitioner no.1 had sought permission from Respondent to repair suit house, which itself indicate that Petitioners had admitted that Respondent is owner of property. Petitioner no.1 was claiming ownership of the suit house which belongs to Respondent. Petitioners had illegally commenced construction in the Respondent's property. From the letters addressed by Petitioner no.1, it is clear that he is admitting that suit house exists in the property of Respondent. The construction indulged in by Petitioners is in violation of rights of Respondent. The material for construction was lying in the suit property and without any right the Petitioners had proceeded to construct the house and hence there was necessity of grant of injunction. The Trial Court has assigned cogent reasons for allowing the application for temporary injunction. Merely claiming that Petitioners are Mundkars in the property, the Petitioners does not acquire any right in the property in the absence of any evidence in that regard. The documents produced before the Court would indicate that Respondent had made out a strong prima facie case for grant of temporary injunction. Grave and irreparable loss would be caused to the Respondent in case injunction was not granted. The Trial Court as well as Appellate Court has taken into consideration the documents, the facts and law while granting injunction. In exercise of powers under Article 227 of Constitution of India, this Court shall not conduct mini trial. The Courts have passed detailed order assigning reasons for granting injunction. There is no fault in the orders of Courts below. Both the Courts have relied upon the decisions of this Court in the case of Vicente Cabral Vs.

Smt.Sunandabai Dayanand Bandodkar 1991(2)-Goa.L.L-331. The said decision is binding on this Court. It is settled principle of law as enumerated in the said decision that mundkarial rights are to be established by court of Mamlatdar. The principles laid down in the said decision are binding on this Court. In the event this Court differs from the view expressed in the said decision, the matter will be required to be referred to larger bench. On one hand Petitioners claim to be the lessee of the property and on the other hand while obtaining permission Defendant no.1 had stated that he is the co-owner of property. Defendant no.1 claimed that his late father was the co-owner of property and thereafter Defendant no.1 had contended before concerned authorities that he is the owner of said property. While opposing the application for injunction Petitioners claim to be the Mundkars of suit house. The Petitioners did not produce any declaration or order from the competent authority to show that they are the Mundkars of property. The Petitioners have admitted that they are carrying out construction of suit house. If the Petitioners are owners or Mundkars of property, the question of seeking no objection from Respondent did not arise. In the light of the decision in the case of Vicente Cabral (supra), it was incumbent upon the Petitioners to obtain declaration from competent authority that they are Mundkars. The Petitioners can neither claim to be the owners and Mundkars at the same time. They also cannot claim to be the tenants. The Petitioners had attempted to interfere in the suit property. They failed to show their right over suit house.

16. Mr.Rao has relied upon following decisions :-

- (i) Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil – (2010)8-SCC-329;
- (ii) Vicente Cabral Vs. Sunandabai Dayanand Bandodkar –

1991(2)-Goa.L.T.-331;

(iii) Domingos Teles and another Vs. Smt.Clara Viegas – 1986-SCC OnLine-Bom-274;

(iv) Radhey Shyam and another Vs. Chhabi Nath and others – (2015)5-SCC-423;

(v) Surya Dev Rai Vs. Ram Chander Rai and others – (2003)6-SCC-675;

(vi) Central Board of Dawoodi Bohra Community and another Vs. State of Maharashtra and another (2005)2-SCC-673;

(vii) State of Madhya Pradesh and others Vs. Pujari Utthan Avam Kalyan Samiti and another – (2021)10-SCC-222;

(viii) Dalpat Kumar and another Vs. Prahlad Singh and others – (1992)1-SCC-719;

(ix) MariaMargarida Sequeira Fernandes and others Vs. Erasmo Jack De Sequeira (dead) through Lrs – (2012)5-SCC-370;

(x) Santosh Hazari Vs. Purusottam Tiwari (deceased) by Lrs – (2001)3-SCC-179;

(xi) Jay Singh and others Vs. Municipal Corporation of Delhi and another – (2010)9-SCC-385.

17. The suit was filed by Respondent for decree of permanent injunction to permanently restrain the Defendants/Petitioners from carrying on any kind of construction in suit property and/or plucking coconuts from coconut trees existing in the suit property or any other fruits of fruit bearing trees existing in the suit property. The Petitioners filed written statement in the suit and contended that suit property is in exclusive possession and enjoyment of Petitioners. It was given on lease to the paternal great grandfather of Defendant nos.1 and 3 along with coconut trees. The properties have been held by the family of Petitioners since the time they were granted to the great grandfather Shri Padmanabh Manjinath Bhat in the year 1905.

It was denied that property surveyed under Survey no.1/1 of Priol village is inscribed in the name of Plaintiff/Respondent. It was also denied that House no.493 belongs to Respondent and it was granted to late Padmanabh Bhat for his residence for proper discharge of his duties as priest of temple. House no.493 was constructed and owned by late Padmanabh Bhat which as apparent in the records of village panchayat Veiling Priol and Cuncollem. What was granted to the Petitioners' great grandfather was exclusive possession and enjoyment of two plots of land falling within the property bearing survey no.1/1 namely "Baglemagil Tukda" and "Toliyavoril Patoli". The same situation continued after the demise of great grandfather of Defendant nos.1 and 3 and by way of inheritance the plots continued to be possessed and enjoyed by the successors in interest of late Padmanabh Manjinath Bhat. It is not on account of his appointment as a priest of the temple of the Respondent that late Padmanabh Bhat started occupying the said house. The construction of said house and its occupation had no correlation at all with the appointment of late Padmanabh Bhat as priest of the temple. The said house was constructed by late Padmanabh Bhat and belonged to him and right thereto has been inherited by his successors. The Petitioners being successors also constructed a cowshed adjacent to the house within property in their possession. The record of rights prepared in the year 1969-70 indicate that house has been recorded as "owned by late Padmanabh Manjinath Bhat" being late father of Defendant no.3. In the records pertaining to house tax in the village panchayat, the name of late Padmanabh Bhat was recorded because house was owned and possessed by him. It was denied that suit house belongs to Respondent. The Petitioners did not seek permission from Respondent to reconstruct suit house and the letter

issued by Petitioners was only to secure acknowledgement of knowledge to the Respondent as to the nature of construction that was intended to be carried out as also the acknowledgement that Respondent was duly informed that the Petitioners were not seeking to encroach upon the property of Respondent and were confining themselves to the existing plinth of the structure and accepted the position. The Defendant nos.1 and 3 were employed as priests in the temple. They have to interact with Mahajans of the temple including the members of Managing Committee of Respondent. It was always their intention to maintain good and cordial relationship with the Mahajans of the temple including the members of Managing Committee. For these reasons the Petitioners persistently and patiently waited for members of the Managing Committee to see reason and presented before them all the necessary documents which would show that the reconstruction proposed by them was in accordance with law and that they were armed with the necessary permissions from all the concerned authorities. The house was in dilapidated condition and was threatening to give way and come down at any times, putting the lives of the inhabitants of the house in danger, and the monsoons were round the corner, the Petitioners commenced the work of construction. In response to the letter dated 5<sup>th</sup> September 2015, the Respondent sent reply dated 14<sup>th</sup> September 2015 to Defendant no.1 clearly stating that house sought to be constructed was his ancestral house. The village panchayat granted licenses for reconstruction. The Health Department issued NOC. These documents were within the knowledge of Respondent. Even in the case set up by Respondent, the Petitioners were the Mundkars and entitled to reconstruct their dwelling house without any reference to Respondent so long as they confine themselves to the

plinth of the existing structure. The Petitioners expressly raised a plea that they are the Mundkars in the suit house and the cowshed. The Petitioners and their predecessors were residing in the suit house with fixed habitation without payment of any consideration since prior to the coming into force of Goa Daman and Diu (Protection from Eviction) Mundkar Act, 1975 and they are entitled to reconstruct the house which is their dwelling house. Even if it were to be admitted that the suit house belonged to the Respondent and they permitted the great grandfather of Petitioners to occupy the suit house, that would not in any manner detract from their status as a Mundkar on the case set up by Respondent themselves and consequently their right to reconstruct the same without any reference to the Respondent in terms of law.

18. In the application for temporary injunction the Respondent/Plaintiff had contended that ownership of Respondent qua the suit property stands admitted by Petitioners. The Respondent has made out strong prima facie case for grant of temporary injunction. The Petitioners filed reply to the injunction application and stated that Petitioners did not require any consent from the Respondent for the purpose of carrying out reconstruction of suit house, nor did they require permission from Respondent. The suit and application is aimed at injuncting the Petitioners from their statutory rights under Goa Daman and Diu (Protection from Eviction) Mundkar Act, 1975, which authorizes them to carry out reconstruction work of their dwelling house.

19. Learned Civil Judge allowed the application for injunction vide Order dated 9<sup>th</sup> May 2022. Learned Judge proceeded as if suit is decided finally while adjudicating the application for injunction.

Learned Judge observed that it is an admitted fact that Respondent is the owner of suit property where suit house is situated and it is also admitted that Petitioners are carrying out construction/repairs to the suit house. The Petitioners neither claimed to be the registered Mundkars nor they have obtained any declaration from any competent authority in regards to their mundkarial rights. Though Petitioners have produced Forms I and XIV in which name of their father is recorded in other rights column, such entries are made merely for fiscal purpose and Petitioners cannot claim any substantive rights merely based on an entry made in the survey records. Applying the ratio in the case of Vicente Cabral (*supra*) it was incumbent upon the Petitioners to obtain declaration the competent authority that they are the Mundkars. The Petitioners have made mutually destructive pleas. The Petitioners on one hand contend that they are Mundkars and on the other hand while obtaining permissions from the competent authorities allege that they are either the co-owners/owners/tenants of the suit property. The Petitioners have not provided any satisfactory explanation as to on what basis they claim to be owners/co-owners/tenants of the suit property. The complaints placed on record indicate that Petitioners have admitted to interfere in the suit property.

20. Learned District Judge while confirming the order of Trial Court has observed that in the written statement the Petitioners have stated that they are tenants of suit property wherein suit house is constructed. While getting permission and license to reconstruct the suit house, they have claimed to be the co-owners of property. Inconsistent statements made has cast cloud of doubt on the Petitioners. The Petitioners are not the Mundkars of suit house. Petitioners have a right to pluck coconuts in certain portions of suit

property. The Respondent would not suffer irreparable loss and injury if Petitioners are not restrained from plucking coconuts from trees. It was held that Respondent would suffer irreparable loss and injury if Petitioners are not restrained from carrying out construction in the property. But the Respondent would not suffer irreparable loss and injury if the Petitioners pluck coconuts from the portions of suit property given to them by Respondent's Resolution dated 19<sup>th</sup> October 1905. The Petitioners would not suffer irreparable loss and injury if the Petitioners are restrained from carrying on construction. Balance of convenience is only partly in favour of Respondent. Learned Civil Judge had erred in holding that balance of convenience is fully in favour of Respondent. The impugned order needs to be partly set aside to enable Petitioners pluck coconuts from the portion of suit property given to late great grandfather of Defendant nos.1 and 3 by Respondent's Resolution dated 19<sup>th</sup> October 1905. The Petitioners be allowed to enter the suit property and pluck coconuts. Learned District Judge set aside the order of Trial Court to the extent of restraining the Petitioners from plucking the coconuts in portions of suit property given to the late great grandfather of Defendant nos.1 and 3 by Respondent's Resolution dated 19<sup>th</sup> October 1905. The portion of order restraining the Petitioners from interfering in the suit property was set aside. Remaining portion of impugned order was confirmed.

21. From the order of Appellate Court it is apparent that conclusion arrived at by the Court was that balance of convenience is not fully in favour of Respondent. It is partly in favour of Respondent. The impugned order was partly set aside. It is pertinent to note that Petitioners were permitted to pluck coconuts. Petitioners were permitted to enter suit property and to live in the

suit house and pluck coconuts. Learned District Judge also observed that portion of suit property was given to late great grandfather of Defendant nos.1 and 3 by Respondent's Resolution dated 19<sup>th</sup> October 1905. Thus, as per the findings of Appellate Court, the great grandfather of Petitioners was in possession of portion of property since 1905, which is prior to coming into force of Goa Daman and Diu (Protection from Eviction) Mundkar Act, 1975.

22. The Respondent are claiming to be the owners of suit property and that the suit house was given to late Padmanabh Manjinath Bhat while he was appointed as priest in the temple. The resolution on record shows that meeting was conducted by Mahajans and Managing Committee members, however, it does not refer to the fact that suit house was given to late Padmanabh Manjinath Bhat as he was performing duties as priest in the temple. The Respondent have not produced any document on record to substantiate their contention as above. The Petitioners are in possession of the suit house. The Appellate Court has permitted the Petitioners to live and interfere in the said suit house. However, they are enjoined from carrying out construction. The Trial Court proceeded on the basis that balance of convenience is in favour of Respondent whereas Appellate Court had held that balance of convenience is partly in favour of Respondent.

23. Petitioners had obtained all the requisite permissions for the purpose of reconstruction of house. Licence for reconstruction was obtained on 4<sup>th</sup> October 2017 from village panchayat which was renewed by renewal dated 21<sup>st</sup> April 2020. Technical Clearance was issued on 8<sup>th</sup> September 2017 from office of Town Planning, TRP, Ponda which was renewed by renewal dated 5<sup>th</sup> October 2020. NOC

was obtained from Public Health Centre, Marcim dated 25<sup>th</sup> April 2017 for reconstruction and from sanitary point of view it was also renewed by renewal dated 3<sup>rd</sup> November 2020. However, Respondent moved the Court and filed suit for injunction and courts below have granted injunction. Both the Courts below ought to have appreciated the principle of balance of convenience in proper perspective. The house was in dilapidated condition. The suit house is in possession of Petitioners. Requisite permissions were obtained by them. They are occupying premises since last several years. The name of late great grandfather of Petitioners is reflected in the record of rights in respect to the suit house. All these aspects were ignored while granting injunction. The Trial Court and Appellate Court were influenced by the fact that Petitioners have raised contradictory pleas. The Petitioners have claimed to be the lessees/co-owners/owners/tenants/mundkars etc. The pleas urged by Petitioners were destructive in nature. The Trial Court drew adverse inference on the basis of such pleas and granted injunction to the Respondent against Petitioners.

24. It is pertinent to note that case of Respondent was based on the fact that Petitioners have admitted that Respondent are owners of suit house. Inference was being drawn on the basis of letters sent by Petitioners seeking no objection for carrying out construction. However, claim of Petitioners was that letter was issued to the Respondent to bring to their knowledge that reconstruction is being carried out and it would not be beyond plinth and there would not be encroachment upon Respondent's property. The Respondent who sought injunction has not established that suit house was handed over to late Padmanabh Bhat for the purpose of living being appointed as the priest in the temple. Respondent could not place on

record a single document in support of said contention. In the letter dated 5<sup>th</sup> September 2015 written by Manjinath Bhat to the Respondent subject was reconstruction of house situated in the property of Devasthan. In the said letter it was stated that his ancestral house is situated in the property of Devasthan. It bears house nos.493 and 494 and its existence is duly reflected in the record of rights in respect of survey no.1, sub division 1 of Priol Village of Ponda Taluka. In the other right column his father's name is reflected as the owner of said house. In April-2011 he sought NOC for carrying out reconstruction of his house as it was in dilapidated condition. He had undertaken to confine to the existing plinth of the house at the time of reconstruction. He had submitted a plan showing the manner in which he intended to reconstruct the house and also requested for NOC but there was no response from Devasthan. The house requires renovation. As big family consisting of men, women and children reside in the said house as also devotees visit the temple and reside in the house, the NOC was requested since house is situated in the property of Devasthan. Thus, in the said letter the author has claimed ownership in the house. Vide reply dated 14<sup>th</sup> September 2015 the Respondent, however, noted that the author of the letter dated 5<sup>th</sup> September 2015 seemed to be claiming the right on the basis of his father's name appearing in the record of rights. However, he has not stated that he is the exclusive legal heir of his father and not furnished NOC or letter of renunciation or any other document which enables him alone to stake a right to apply for reconstruction. The ancestors were asked to perform Pooja and other rituals in the temple and they were permitted to reside in the said house by Devasthan. This does confer any right on the legal heir to perform any religious rituals or reside

in the said house. It is pertinent to note that Respondent did not refer to any evidence in support of its claim that suit house was handed over to the ancestors who were performing duty as priest.

25. One of the defense of the Petitioners which is appearing in the written statement filed by them is that they have claimed Mundkarship in the house. The Trial Court has held that Petitioners ought to have obtained such declaration from the competent authority. Learned advocate for Respondent has strongly relied upon decision of this Court in the case of Vicente Cabral Vs. Sunandabai Dayanand Bandodkar (supra). It is submitted that party claiming Mundkarial rights should approach the Court of Mamlatdar for seeking such declaration.

26. It is pertinent to note that in the present case Trial Court was deciding the application for injunction. In the suit the Petitioners have filed written statement and along with other grounds it was also claimed that Petitioners are Mundkars. The order passed by Appellate Court indicate that property was entrusted to the great grandfather of Petitioners by way of Resolution dated 19<sup>th</sup> October 1905 which was obviously prior to the coming into force of Goa Daman and Diu (Protection from Eviction) Mundkar Act, 1975. In any case, it was one of the plea of Petitioners. The Petitioners have raised several pleas for opposing application for injunction. The claim of Petitioners is that they are in possession of premises since last several years. The record indicate that there are requisite entries in the record of rights in the name of Petitioners' great grandfather. The Trial Court, however, brushed aside said claim on the ground that such entries does not create right in favour of ancestors. It is necessary to note that Respondent have not established as to how the

house belonging to the Respondent came into the possession of Petitioners. It is relevant to note that Court was not deciding the suit finally but only deciding application for injunction.

27. In the case of Vicente Cabral Vs. Sunandabai Dayanand Bandodkar (supra), the challenge in the revision application before this Court was to the order passed by District Judge along with appeal preferred by Respondents against order passed by Civil Judge dismissing applicant's application for temporary injunction though directing the same petitioner to restrict the construction of the suit house to the plinth area. The respondent therein had filed suit for declaration and permanent injunction against petitioner on the ground that there exists a property at Taleigao. The suit property is essentially coconut grove and there were many houses in the same. The suit was resisted on several grounds and one of the ground was that petitioner is Mundkar of suit house. Respondent had sought temporary injunction in the suit. The Trial Court dismissed the application for injunction but restrained the petitioner from constructing the house beyond plinth of 58 sq.mtrs. The respondent preferred appeal before the District Court which was partly allowed and petitioner was stopped from reconstruction of suit house. It was contended by the advocate for respondent that at the relevant time when the suit was filed, petitioner was not in actual possession of suit house and therefore question of restoration of possession did not arise and that jurisdiction to declare a person as Mundkar is exclusively vested in Mamlatdar and no such declaration was made by Mamlatdar. Factual matrix of the case indicate that house was already collapsed and thereafter party moved for construction of house. At the time of collapse the party was not in possession of house. The house had been seriously damaged by fall of tree and

therefore no house was existing at the place thereafter. Hence whatever occupation the petitioner had in respect of the house, the same had ceased to exist at the time he vacated it and demolished the same. This being so and in the absence of declaration of Mundkarship, the Trial Court ought to have considered that right of ownership includes possession and as such the respondent had a case to restrain the petitioner from reconstructing the house which reconstruction in any event in the circumstances of the case would amount to an alteration or change of status quo. Thus from the observations of the Trial Court and the facts of the case would indicate that at the time when house was demolished on account of fall of tree, the petitioner was claiming permission to reconstruct house was not in possession of the house. No doubt in the said decision the Court has also observed that there was no declaration of Mundkarship by Mamlatdar.

28. In the case of Lark Laboratories (India) Ltd, New Delhi Vs. Medico Interpharma Ltd, Baroda (supra), the Gujarat High Court has held that satisfaction that there is prima facie case by itself is not sufficient to grant temporary injunction. The court has further to satisfy that no interference by the court would result in irreparable injury to the parties seeking relief and that there is no other remedy available to the party except one of granting injunction, and he needs protection from consequence of apprehended injury of dispossession. Though the learned Judge of the trial Court has come to a conclusion stating in a single line that balance of convenience is in favour of plaintiff, he has not discussed any material or affidavit to come to such conclusion. In order to arrive at a particular conclusion, the learned Judge of the trial court is required to state the reasons for arriving at such conclusion in his order and that the reasons should

be plausible reasons. The absence of any reason to arrive at a particular decision will be unjustifiable in eye of law, because when a judicial discretion is to be exercised, the same is to be exercised with due care, caution and circumspection. In the absence of any reason it is very difficult to justify the conclusion reached to by learned Judge with regard to balance of convenience in favour of plaintiff. The Court discussed the material to come to a conclusion that irreparable injury would be caused to the plaintiff.

29. In the case of Laxmi w/o Sonu and others Vs. Sawanta Bapu Mali (supra), this Court has referred to the decision in the case of Sujanbai Vs. Motiram (1980-Mh.LJ.-578) wherein it was observed that in granting temporary injunction for restraining one party to the suit from interfering with the possession of the other, party the civil court is primarily concerned not so much with the question as regards title of the property or the capacity in which the person claiming to be in possession is holding the property, as with the question as to who is in possession of the suit property at the time of the institution of the suit and this decision has to be arrived at on the basis of evidence which would be adduced in that connection. It was further observed that question is not ultimately what other reliefs are claimed in the suit. If plaintiff is alleging that he is in possession and therefore he wants his possession to be protected by an appropriate order made under Order 39 Rule 1 of the Code, then the Court considering whether he is prima facie in possession and other such factors as the balance of convenience, an give interim relief by way of injunction restraining the defendant from disturbing the plaintiff's possession.

30. In the case of Mulla Ali Riza Muzawar and others Vs.

M/s.Damodar Builders and others (supra), this Court has observed that the Court while issuing injunction is not prima facie concerned with the plaintiff but also must equally be concerned with comparative hardship or mischief likely to incur for defendants.

31. The decision of Hon'ble Supreme Court in the case of Dalpat Kumar and another vs. Prahlad Singh and others (supra) lays down guidelines for the Courts to grant interim injunction particularly a negative injunction. It was observed that if there is serious disputed question to be tried in the suit and that an act, on the acts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant, it is necessary to protect the parties interest from injury. However, the Court while issuing injunction is not only concerned with prima facie case of plaintiff but also must be equally concerned with the comparative hardship or mischief or inconvenience which is likely to occur for the defendant.

32. In the case of Deepak Kaushal Vs. Kohan Lal Sukhadia University, Udaipur and another (supra), the High Court of Rajasthan has observed that Appellate Court deciding an appeal has to be very cautious in its verdict. Its order should not disclose its opinion on merits on any point to be decided finally in the suit. The expression of opinion by the Trial Court itself while deciding the application for temporary injunction is tentative and only for the purpose of assessing whether there is a prima facie case in favour of plaintiff or the applicant for temporary injunction. Likewise the Appellate Court while deciding an appeal from an order granting or rejecting application for temporary injunction cannot sit in judgment over the merits of the controversy in the suit but has to go into the matter only for the purpose of deciding whether there was prima facie case

in favour of the applicant for injunction. It was held that Appellate Court in the said case had failed to observe above test and committed error. It had no jurisdiction to decide the controversy in suit finally on merits by finally interpreting the rules one way or the other. The Court committed a material irregularity in its approach to the question of balance of inconvenience and irreparable injury. The question of prima facie case, balance of inconvenience and irreparable injury have to be examined independently to each other. Though in some cases consideration may overlap but in no case only because there is prima facie case in favour of the appellant, it can be automatically held that balance of convenience has to be in his favour and that irreparable injury would be caused to him if injunction is not granted. Conversely it also cannot be automatically held that where prima facie case is not found in favour of the applicant as a necessary corollary, it has to be taken that the balance of convenience is also not in his favour and irreparable injury would also not be caused to him if injunction is not granted.

33. In *Koyilerian Janaki and others Vs. Rent Controller (Munsiff) Cannanore and others (supra)*, the Hon'ble Supreme Court has held that power under Article 227 is exercisable where it is found by the High Court that due to a certain grave error an injustice has been caused to a party.

34. In the case of *Radheshyam Vs. Tuljaprasad and others (supra)*, it was observed by this Court that if use of discretionary power is improperly and arbitrarily made by trial Court, then supervisory jurisdiction has to be exercised. Reference was made to the decision of Hon'ble Supreme Court in the case of *Kishore Kumar Khaitan Vs. Praveen Kumar Singh (AIR-2006-SC-1474)* wherein it was laid down

that supervisory jurisdiction may be exercised to ratify the errors in rendering the finding of fact when there is impropriety committed by Court.

35. In the case of Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil (supra), it was observed by the Hon'ble Supreme Court that power under Article 227 is discretionary and has to be exercised from sparingly on equitable principle. This power on judicial intervention to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of Justice in the large public interest.

36. In the case of Domingos Teles and another Vs. Smt. Clara Viegas (supra), this Court had observed that from the pleadings it is seen that title of the Petitioners over the property was not disputed as it is not disputed that sub structure had been in continuous and peaceful possession of family of respondent for long time and it as the case of petitioners that suit property was in dilapidated condition for couple of years and it was not repaired. Despite clear admission on the part of respondents that suit structure was not only unoccupied the household articles were removed therefrom. It was further observed that it was contended by parties that one of them had approached the Mamlatdar with application that he be declared Mundkar on suit structure and Mamlatdar who has exclusive jurisdiction to make such declaration has held that he was not a Mundkar. Therefore it does not lie in the mouth of respondent to take a stand she took in the written statement that she had acquired title being Mundkar and of adverse possession which cannot go together. The Court observed that evidence was not sufficient to decide in what capacity respondent had been occupying the house.

There was no material before the Court to come to give a finding that respondent is entitled as a matter of right to reconstruct the suit structure without permission of owners of property.

37. In the case of Surya Dev Rai Vs. Ram Chander Rai and others (supra), it was held by Supreme Court that supervisory jurisdiction under Article 227 of Constitution of India is to be exercised for keeping subordinate Courts within bounds of jurisdiction. It is not available for correcting mere errors of facts of law.

38. In the case of Central Board of Dawoodi Bohra Community and another Vs. State of Maharashtra and another (supra), it was observed that the doctrine of binding precedent has the merit of promoting certainty and consistency in judicial decisions and enables an organic development of law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs.

39. In the case of Maria Margarida Sequeira Fernandes and others Vs. Erasmo Jak De Sequeira (dead) through LRs (supra) it is observed by Supreme Court that there is a presumption that possession of a person other than the owner, if at all it is to be called possession, is permissive on behalf of the title holder. Further, possession of the past is one thing and the right to remain or continue in future is another thing. It is latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the courts.

40. Considering the factual matrix of the matter and in the light of judicial precedents as referred to hereinabove and reasons stated above, I find that Trial Court as well as Appellate Court have

committed error in granting injunction against Petitioners restraining them from carrying out construction of the suit house. Hence relief sought in this petition deserves to be allowed.

### ORDER

- (i) The impugned Order dated 9<sup>th</sup> May 2022 passed by Civil Judge, Junior Division, 'B' Court, Ponda, Goa in Regular Civil Court No.25/2022/B allowing application for temporary injunction at Exhibit-3 is quashed and set aside;
- (ii) The impugned Order dated 1<sup>st</sup> July 2022 passed by District Judge-II, Panaji in Miscellaneous Civil Appeal No.49 of 2022 to the extent it injuncts Petitioners from carrying out construction of the suit house, is quashed and set aside;
- (iii) Writ Petition No.378 of 2023 is allowed in above terms.;
- (iv) Petition stands disposed off.

(PRAKASH D. NAIK, J.)

41. At this stage, learned Advocate for the Respondent requested for extension of order of injunction passed by the Courts below for a period of eight weeks as the respondents intend to challenge this order before the Apex Court.

42. Considering the request of learned counsel for Respondent, order of injunction granted by lower Court is extended by a period of eight weeks from the date of uploading the Judgment.

(PRAKASH D. NAIK, J.)

MST