



**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 937 OF 2023**

DIGAMBAR V. SHIRODKAR AND 7
ORS. Petitioners.

Versus

YELLAPPA DURGAPPA TALWAR Respondents.

Mr Rui Alberto Gomes Pereira, Advocate for the petitioners.

CORAM: BHARAT P. DESHPANDE, J

Date : 12th September 2024.

ORAL ORDER:

1. Heard Mr Pereira, learned counsel for the petitioner.
2. The challenge in the present petition is to the impugned order dated 8.8.2023 by which learned trial Court rejected an application filed under Order XXVI Rule 9 of CPC for issuing commission.
3. Mr Pereira submits that the petitioners/plaintiffs filed a suit for declaration, restoration of possession, permanent injunction and damages against the respondent/defendant.
4. Plaintiffs are claiming that the suit property belongs to them and that the sale deed in question was executed by fraud. The declaration is that plaintiffs are the owners of the suit property.
5. Mr Pereira submits that in order to find out the dimensions of the construction carried out in the suit plot by the defendants, an

application was filed under Order XXVI Rule 9 of CPC since plaintiffs apprehend that defendants may not allow them to enter the plot along with surveyor to carry out measurements. Mr Pereira submits that discretion is available with the Court to issue commission; however, the learned trial Court has committed an error by refusing on the ground that help from the Court cannot be taken to collect evidence.

6. Suit which is filed against respondent/defendant is with the following prayers:-

- “a. Declaring the first deed of sale and the second deed of sale, both dated 05/02/2003 as null and void.*
- b. Ordering the Defendant to demolish the entire structure/construction in the suit property and to restore the suit plot to its original condition.*
- c. Ordering the Defendant to vacate the suit plot.*
- d. Ordering the Defendant to pay to the Plaintiffs a sum of Rs.1,00,000/-as compensation/damages.*
- e. Ordering the Defendant to pay a sum of Rs.5,000/-per day from the date of filing of this Suit until the Defendant vacates the suit plot.*
- f. Issuing a perpetual injunction restraining the Defendant from interfering with this suit property in any manner of whatsoever, from alienating the suit plot and from creating any third party rights to the suit plot/construction in the suit plot.”*

7. On perusal of the plaint, it is clear that suit plot is admittedly in possession of the defendant and certain documents relied upon by the plaintiffs would go to show that even the sale deed was allegedly executed. Similarly paragraph 7 of the plaint shows that panchayat

has issued necessary permission to the respondent/defendant for carrying out construction.

8. The main pleadings of the plaintiffs is that the alleged sale deed relied upon by the defendants is a forged document and therefore, title of the property has not passed on to the defendants. The suit itself shows that plaintiffs are seeking declaration that the sale deed is null and void. Consequential prayer as quoted above in the prayer clause including handover of vacant possession of the suit plot to the plaintiffs.

9. In such circumstances, even if suit is decreed, plaintiffs would be entitled for possession of the entire suit plot together with any structure existing therein.

10. Mr Pereira submits that admittedly construction is already complete and not in progress. Thus, the question of appointing commission in such circumstances, would not arise.

11. Even otherwise, observations of the learned trial Court in the impugned order, cannot be faulted with.

12. In the above circumstances, no interference under the supervisory jurisdiction of this Court is warranted. Accordingly, the petition stands dismissed.

BHARAT P. DESHPANDE, J.