



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.49 OF 2024
WITH
CIVIL APPLICATION NO. 7 OF 2024
IN
WRIT PETITION NO.49 OF 2024
WITH
WRIT PETITION NO. 1614 OF 2024 (F)**

Mr. John Godfrey Gonsalves,
son of late Mr. Antonio Gonsalves
aged about 63 years, married,
retired employee, permanent
r/o H.No. 329, Daktem Bhat,
Dongrim, Mandur, Tiswadi-Goa

...PETITIONER

VERSUS

1. Mrs. Felicidade Vaz,
daughter of Jose Dias, of major
age, married, housewife,

2. Peter Vaz,
son of Mr. Jacinto Vaz,
aged 70 years, retired,
Both r/o H. no.270,
Tinto, Mandur, Ilhas Goa.

3. Mr. Mohammad Hanif Shaikh,
of major age, Contractor,
r/o Malwara, Agacaim,
Tiswadi, Goa. {Deleted as per
Order dated 11/07/2024}

...RESPONDENTS

Mr. Preetam Talaulikar, Advocate for the Petitioner in the W.P. 49/2024; WP.1614/2024/F and for the Applicant in C.A.7/2024.
Mr. Dharmanand Vernekar, Advocate for the Respondents in W.P. 49/2024; WP.1614/2024/F and C.A.7/2024.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 25th September, 2024

ORAL ORDER

1. Heard Mr. P. Talaulikar learned counsel for the Petitioner and Mr. D. Vernekar learned counsel for the Respondents.

2. Writ Petition No. 49/2024 is filed challenging the order passed on 12/09/2023 by the First Appellate Court who refused to disturb the findings given by the Trial Court in the order dated 07/05/2022 while rejecting Temporary Injunction application.

3. Writ Petition 1614/2024(Filing) is filed basically challenging order passed by the learned Civil Judge Junior Division dated 03/05/2024 thereby rejecting application filed by the Petitioner at Exhibit 37 for allowing him to put

metallic sheets above the structure consisting of three walls, to protect such walls from being further damaged.

4. The proceedings before the Trial Court is in the nature of Suit for Permanent Injunction filed by the Respondent against the Petitioner together with injunction restraining the Petitioner/Defendant from carrying out any construction. The Petitioner/Defendant filed written statement with counter claim and also applied for Temporary Injunction.

5. It is the contention of the Petitioner that there exists a mundkarial house the roof of which collapsed during cyclone which struck Goa somewhere in the year 2021. Even one wall of the said mundkarial house was damaged and collapsed. The Petitioner/Defendant sought No Objection Certificate from the Village Panchayat to repair. However, Respondent/Plaintiff filed a suit together with Injunction application in order to restrain the Petitioner from carrying out such repairs.

6. It is the case of the Respondents/Plaintiff that the Petitioner/Defendant is not having any mundkarial rights over the said house, however, the Defendant demolished the said house and started new construction under the guise of no objection certificate given by the Village Panchayat.

7. The fact remains that the injunction filed by the Respondent/Plaintiff was granted thereby restraining the Petitioner/Defendant from carrying out any further construction. Appeal filed against it was rejected by the First Appellate Court which has been challenged by the Petitioner by filing Writ Petition No. 49/2024.

8. During pendency of the said proceedings, the Petitioner filed separate application before the Trial Court seeking permission to erect metallic shade over and above three walls which are existing at the site so that such walls could be protected from rain, together with his belongings kept therein. The said application was opposed by the Plaintiff and finally rejected by the Trial Court by impugned order dated 03/05/2024 which is challenged in the Writ

Petition No. 1416/2024.

9. Mr. Talaulikar learned counsel appearing for the Petitioner restricted his submissions with regard to permission to erect the metallic shade over and above the three walls only to protect such structure and the plinth area, during the disposal of the suit. He submits that let the injunction granted in favour of the plaintiff be continued. He also submits that by erecting a metallic shade, the structure will not be occupied by the Petitioner. He submits that the purpose is only to save the remaining three walls as well as the plinth area, since the Plaintiff is denying existence of even the walls or the plinth area.

10. Mr. Vernekar learned counsel appearing for the Respondent strongly opposed such prayers and claimed that there is only one wall standing at present at the site. The said wall is now covered with polythene sheets. He submits that report of the Village Panchayat would certify above position.

11. Since the restricted relief which is now claimed by the Petitioners, the question is whether there are three walls existing at the site and if so, whether such walls require any protection as tried to be claimed by the Petitioners, till the disposal of the suit. Since the Petitioners have been restrained by an order of Temporary Injunction from carrying out any construction at the site, an application is filed by the Petitioner to permit him to erect metallic shade so that the walls could be protected.

12. The disputed questions as to whether the Petitioner is having any mundkarial rights or whether the roof and one wall collapsed due to cyclonic effect, will have to be gone into during trial as the Respondent/Plaintiff herein, disputed about such claim.

13. The contention of the Respondent/Plaintiff that there exists only one wall whereas the Petitioner claimed that there are three walls at the site since only the fourth wall collapsed.

14. In such circumstances, both the learned counsel on instructions from the parties agree that the Petitioner will file an application before the learned Trial Court for the site inspection through Bailiff of the Court and in presence of the parties to ascertain whether at the site only one wall exists or there are three walls standing, what is the plinth area of the old structure and whether any household belongings are lying at the said site.

15. This arrangement is necessary to consider whether the Wall/Walls existing at the site require any protection since it is claimed that the roof collapsed. The Bailiff is also required to verify whether the roof of the said structure entirely collapsed.

16. The parties through their Advocates further agree that such inspection shall be carried out within a week and once the report is placed on record, the Petitioner may file fresh application before the learned Trial Court for the purpose of protection of the wall/walls existing at the site. If such application is filed, the same shall be decided on its own

merits, within a period of one month thereafter.

17. In view of the above observations, the parties are permitted to approach the Trial Court by filing an application for spot inspection through the Bailiff of the Court and thereafter apply to the Court for protection of such wall/walls

18. In view of the above findings, the learned Trial Court is directed to appoint a Bailiff on an application filed by the Petitioner, to carry out spot inspection in presence of the respective parties and then to consider the aspect of protection of such structure afresh and in accordance with law.

19. Both the petitions stand disposed of in above terms.

BHARAT P. DESHPANDE, J.