

**THE COURT OF CIVIL JUDGE JUNIOR DIVISION AT
PONDA
(Before Mrs. Sharmila Patil, Civil Judge Junior Division at Ponda)**

Regular Civil Suit No.13/2014/C

1. Smt. Prema Ganesh Gaonkar,
Widow of late Ganesh Topyo Gaonkar,
age 60 years, agriculturist,
2. Shri. Deepak Ganesh Gaonkar,
S/o late Ganesh Topyo Gaonkar,
age 40 years, married, service and his wife
3. Smt. Seema Deepak Gaonkar,
Wife of Shri. Deepak Ganesh Gaonkar,
age 35 years, housewife,
4. Shri. Rajesh Ganesh Gaonkar,
S/o late Ganesh Topyo Gaonkar,
age 34 years, married, service and his wife
5. Smt. Reena Rajesh Gaonkar,
Wife of Shri. Rajesh Ganesh Gaonkar,
age 26 years, service,
6. Shri. Gauresh Ganesh Gaonkar,
S/o late Ganesh Topyo Gaonkar,
age 33 years,

All residents of House No.37, Mudai,
Panchwadi, Shiroda, Ponda – Goa ... Plaintiffs

V/s

1. Shri. Chandrakant Vishnu Gaonkar,
Son of Shri. Vishnu Atma Gaonkar,
major in age, married, occupation service,
and his wife

2. Smt. Triveni Chandrakant Gaonkar,
Wife of Shri. Chandrakant Vishnu Gaonkar,
major in age, housewife,

both residents of House No.M-52, Mudai,
Panchwadi, Shiroda, Ponda - Goa ... Defendants

Plaintiffs represented by learned Advocate Shri. M. P. Sawaikar
at the time of the arguments and learned Advocate Ms. R.
Phadte at the time of the order.

Defendants represented by Learned Advocate Sarvesh Naik at
the time of the arguments and at the time of the order.

O R D E R

(Delivered on this 28th day of the month of May, of the year
2014)

This order shall dispose of the application for
temporary injunction filed by the Plaintiffs at exhibit D/6.

2. In brief, it is the case of the plaintiffs that in Village
Panchwadi, in Ponda Taluka there is a property known as “Dadir”
and surveyed in the recent survey under survey No.122/0 of
Village Panchwadi in Ponda Taluka. That the said property is
bounded as under :-

On or towards the East : By a public road going from Amblai

to Ambegan;

On or towards the West : By survey No.123 and its sub-division and survey No.124;

On or towards the North : By survey No.125/0 and 141/0;

On or towards the South : Partly by road going from Sakhayali Mudai to Voili Mudai and partly by survey No.121 and its sub-divisions, survey No.120 and its sub-divisions.

3. That the said property "Dadir" is also known as "Dadhir" or "Daddir" and the same is enrolled in Land Revenue Office under Matriz No.855 and as per the revenue records the said property at the relevant time is bounded as under :-

On or towards the East : By Summit of hillock;

On or towards the West : By Chanfo (2nd lot) of Giulo Bablo Gauncar and others;

On or towards the North : By Quella Coddil tucdo of Queshoa Forgenta and;

On or towards the South : By Dada of Tulxi Gauncarina.

4. That the said property is registered in the name of Baboni Foquir Gauncar of Ponchovadi with the assessable income of six rupees and shall be referred as the suit property for the sake of brevity.

5. That the suit property is an agricultural land in which there are mainly/predominantly cashew trees which are yielding. That besides that there are also other trees such as teakwood trees, forest trees and shrubs and bushes. That the name of late Ganesh Topyo Gaonkar who is the husband of Plaintiff No.1 and father/father in law of remaining Plaintiffs is appearing as one of the occupants at serial No.11 in Form No.I and XIV of survey No.122/0 i.e. of the suit property. That the said Shri. Ganesh Topyo Gaonkar expired on 17/02/1998.

6. That during the lifetime of late Shri Ganesh Topyo Gaonkar, he possessed and enjoyed the suit property as co-owner alongwith other co-owners and after the death of said Shri Ganesh Topyo Gaonkar, the Plaintiffs have inherited co-ownership right in the suit property along with other 17 co-owners or their descendants whose names appear in said Form No.I and XIV. That at the time of recent survey, the name of late Shri Ganesh Topyo Gaonkar alongwith 17 other persons is included in Form No.I and XIV and that all the said persons whose names appear in Form No.I and XIV are the co-owners of the suit property.

7. That during the lifetime of late Shri Ganesh Topyo Gaonkar, all the co-owners divided the suit property among themselves orally and since last more than 50 years each co-

owner is enjoying his part separately and independently without the interference of other co-owners or anybody else. That late Shri Ganesh Topyo Gaonkar was in possession and enjoyment of a specific part lying towards eastern – southern side of the suit property which part is more particularly shown with red lining on the plan annexed. That in tenant's column, there are 10 persons whose names are recorded as tenants of the suit property. That the said ten names are wrongly or erroneously included as tenants. That on perusal of Form No.I and XIV it can be seen that names of said 10 persons who are recorded as tenants of the suit property are also recorded as occupants of the suit property in the survey records. That an occupant of a property cannot be a tenant of the said property and therefore the Plaintiffs state that the entries in the tenant's column are erroneous entries.

8. That the Plaintiffs alongwith other co-owners are in possession, occupation and enjoyment of a specific part of the suit property and the yield of the cashew trees and other fruit bearing trees from the specific portion is being enjoyed by all the co-owners peacefully without any dispute or differences between all the co-owners. That the yield of the cashewnuts from the suit property is being sold by the Plaintiffs and other co-owners at Sanvordem market yard and in particular to Goa Bagayatdar Kharedi Vikri Society Ltd. That as the Plaintiffs and other co-

owners of the suit property did not know the importance of preservation of cashew sales receipts / cash memo, the Plaintiffs either destroyed the same or threw it away for remaining years.

9. That the suit property is not divided / partitioned till this date by metes and bounds amongst all co-owners but is being possessed and enjoyed specific shares as decided during the lifetime of late Ganesh Topyo Gaonkar. That the Defendants or any other persons do not have any right, title or interest of whatsoever nature to the suit property or any part therefrom. That the Defendants are also not related in any way to the suit property or to the Plaintiffs or other co-owners through whom they could claim right, title or interest to the suit property.

10. That to the surprise of the Plaintiffs, the Defendants trespassed in the suit property on 12/08/2013 and started constructing a compound wall of broken laterite and rubble stones in the suit property thereby encroaching on an area of about 300 sq. mts. That the Plaintiff No.1 immediately on the same day filed a complaint of the said illegal construction of compound wall to the Sarpanch, Village Panchayat, Panchwadi, Panchwadi, Goa. That Plaintiff No.1 is illiterate and she does not know to read and write any language. That while narrating the complaint dated 12/08/2013 to the Sarpanch, Village Panchayat, Panchwadi, she wrongly stated / mentioned the survey number

of the property as 121/2 instead of 122/0. That when the said mistake was realised by other Plaintiffs, a corrected complaint correcting the survey number from 121/2 to 122/0 was filed to the Sarpanch, Village Panchayat, Panchwadi on 16/08/2013.

11. That acting on the said complaint, the Village Panchayat, Panchwadi issued a notice to Defendant No.1 on 31/12/2013. In spite of the said notice, the Defendants did not stop the construction of said illegal compound wall and completed it hurriedly by using political influence, manpower, money, etc. That earlier they had also filed a police complaint to Police Inspector, Ponda Police Station on 27/12/2013 regarding the illegal construction of the compound wall by the Defendants. But till this date, Ponda Police have not taken any action against the said illegal construction of the Defendants.

12. That as no effective and executive action was taken by the Village Panchayat, Panchwadi and Ponda Police, the Defendants got encouraged with their illegal acts of encroachment in the suit property by constructing a compound wall and thereafter started digging trenches for foundation within the said encroached area for the construction of a structure / house in the suit property. That every now and then they were pursuing their complaints with the Sarpanch, Village Panchayat,

Panchwadi and with Police Inspector, Ponda Police Station hoping that both the authorities would take action against the Defendants and their illegal encroachment. That taking this opportunity, that both the authorities are not serious to take any action, the Defendants completed illegal construction of the structure / house having an area of about 24 sq. mts. That the walls of said structure / house are made up of laterite stones and the roof is covered with asbestos sheets. That the Plaintiffs have taken photographs of the said illegal construction of compound wall and structure / house by way of encroachment made by the Defendants in the suit property and the photocopies of the same are relied upon and produced herewith along with CD.

13. That they have also drawn the site sketch (not to scale) of the said illegal encroachment and the structure / house of the Defendants by way of encroachment in the suit property. That they want to draw the exact plan of the encroached area along with the area of the structure / house through a qualified Architect / Engineer / Surveyor and accordingly they had contacted Engineer by name Shri. K. P. Bhangu who had at the instance of the Plaintiffs had come at the site but the Defendants did not allow him to take exact measurements of the encroached area and the area of the structure as the Defendants threatened the Plaintiffs and said Engineer K. P. Bhangu with dire

consequences. That inspite of the threats of dire consequences, said Engineer K. P. Bhangui has taken the measurements from outside and drawn the plan of the said illegal construction of compound wall by way of encroachment and construction of structure/house within the said compound wall/encroached area.

14. That as the Defendants gave threats to the Plaintiffs and said Engineer, he could not do the job entrusted to him properly and as required and as such Plaintiffs are filing a separate application along with this suit, allowing the Plaintiffs to take detailed measurements of encroached area in the suit property including the suit structure and prepare a plan to the scale and the report and also photographs through a qualified surveyor, engineer, etc. That the Defendants do not have any right, title or interest in the suit property and therefore they are rank trespassers in the suit property and the acts of the Defendants by way of construction of compound wall and thereafter construction of a structure / house is totally illegal which has invaded the legal, proprietary and co-ownership rights of the Plaintiffs and other co-owners to the suit property. That the Defendants have not taken any permission / license from the Village Panchayat, Panchwadi or any other authority / authorities as required under law and therefore also the said construction is illegal. That within the said encroached area there are about 10

cashew trees which are yielding.

15. That the cashew season of this year is already began and cashew trees have already flowered. That the Plaintiffs apprehend that the Defendants would not allow the Plaintiffs to enter within the said encroached area of 300 sq. mts. and enjoy the yield of cashew trees from the said area. If the Defendants would not allow the Plaintiffs to enjoy the said cashew yield including the yield of other trees a great prejudice and irreparable loss shall be caused to the Plaintiffs and there are no measure to assess the said monetary loss as the yield of cashew trees varies each year as it depends on the climatic condition and therefore the present application.

16. The Defendants have filed their written statement denying the case made out by the Plaintiffs. It is the case of the Defendants that the present suit is not maintainable as there is no cause of action for the Plaintiffs against the Defendants. That the Plaintiffs have no locus standi to file the present suit. That the Defendants are in possession and enjoyment of portion of the suit property along with various other persons. That the said property is an ancestral property of the Defendants and others and are in possession of definite portion of the suit property with the consent and without any objection from

others. That there has been no partition of the suit property and the same remains as common, undivided property but the definite portions are enjoyed by the co-owners including the Defendants herein and there has been no dispute about the possession among the various co-owners.

17. That the name of late Shri Ganesh Topyo Gaonkar has been wrongly recorded in the occupants column of survey No.122/0. That Plaintiffs have no right to the suit property and are claiming right to the suit property based on the wrong entry in occupant's column of Ganesh Gaonkar. That name of Shri Ganesh Topyo Gaonkar has been wrongly recorded in occupant's column and based on such wrong entry the Plaintiffs are claiming right to the suit property. That there are various persons who are the co-owners of the property including the Defendants whose names are not recorded in occupant's column. That there are various other persons in possession and enjoyment of suit property besides the person whose names appear in Form No.I and XIV.

18. That the suit property even today remains a common, undivided property. That the various co-owners are in enjoyment of the portion of the suit property as per their convenience and long standing possession. That the Defendants

are also in possession of the portion of the suit property. That Plaintiffs are not in possession and enjoyment of the portion as shown on the plan as a matter of right but are in possession of portion as a trespasser. That Plaintiffs have no right to the suit property and that the Plaintiffs are trying to take advantage of the wrong inclusion of name of Shri Ganesh Topyo Gaonkar in the survey records. That the Defendants engaged the services of Surveyor Shri. Devidas Naik who has shown the various portions in possession of different persons including the Defendants.

19. That Plaintiffs are on inimical terms as the Defendants are obstructing the Plaintiffs from encroaching in the suit property. That Plaintiffs who are having house in the suit property have done illegal construction of compound wall around the house and also illegal construction to the house and as such the Defendant No.2 filed a complaint to the Panchayat against the illegal construction on 26/08/2013. That based on the said complaint a show cause notice was issued to the Plaintiff No.1 dated 23/09/2013. That the Panchayat recorded a joint statement on 27/09/2013 whereby it was directed by the Panchayat to get the property demarcated among the co-owners and without such demarcation the issue cannot be resolved. That the Defendant No.1 received a notice from the Panchayat

dated 19/08/2013 based on false complaint filed by the Plaintiff No.1. That the Defendant No.2 filed a reply to the said notice dated 26/06/2013 whereby the Defendants have claimed that they are the co-owners of the property and that the compound wall was constructed for more than 30 years back and that only repair was done to the same on account of damage due to rains.

20. In fact the Defendant in the month of August, 2013 had made clear to the Panchayat that only repair was done to the existing compound wall and that there was no new construction and as such the Defendants did not even file any reply to the said notice dated 31/12/2013. That Plaintiffs are in habit of filing false complaint only to harass the Defendants. That they have not received any intimation of the complaint alleged to have been filed by the Plaintiffs from the police. That the house of the Defendants is in existence for more than 30 years and have only carried out repairs to the same and that there has been no new illegal construction as alleged in the plaint.

21. That the walls of the said structure / house are made up of laterite stones and the roof is covered with asbestos sheets. That the alleged construction of house was done about thirty years back and the same was having mud walls covered

with palm leaves. That as the walls of the house had developed cracks and were on the verge of collapse, the Defendants got the walls repaired and reconstructed with laterite stones and covered with asbestos sheets. That the Defendants deny having done any new illegal construction of house as alleged. That the compound wall was constructed about 30 years back when the said house was constructed and the compound wall was also repaired. That the authorities were satisfied that there was no illegal construction done by the Defendants and hence no action was initiated by them. That the house and compound wall is in existence since long as stated above and that there has been no new construction. That the sketch shows the location of the house of the Defendants.

22. That the said structure identified by the Engineer is imaginary and has been shown as per the requirement of the Plaintiffs. That the said allegations are imaginary and are made only to obtain sympathy of the court and file application to the court for its assistance. That they are the co-owners of the suit property in settled possession and have their house and compound wall which is more than 30 years old. That since the defendants have not undertaken any work of construction there is no question of Defendants obtaining any construction license from the Village Panchayat for the purpose of carrying out

construction or complying with any other formality which is required to under law to be complied for such construction. That the Defendant No.2 filed an application dated 10/01/2014 to the Panchayat under R.T.I. regarding the illegal house of the Plaintiffs and by reply dated 07/02/2014 information was supplied whereby it is clear that the Plaintiffs have done illegal construction in the suit property and therefore prayed that the application be dismissed.

23. Heard Learned Advocate Shri. M. P. Sawaikar for the Plaintiffs and Learned Advocate S. Naik for the Defendants.

24. I have gone through the records of the proceedings, the documents produced by the Plaintiffs and the Defendants and I have considered the arguments advanced by the Learned Advocates for both the parties. After going through the material before me, the points which fall for my determination along with their findings are given as under:

POINTS	FINDINGS
1 Is there a prima facie case in favour of the Plaintiffs ?	Affirmative
2 Does the balance of convenience tilt in favour of the Plaintiffs ?	Affirmative
3 Will irreparable loss and injury be caused to the Plaintiff if injunction is not granted ?	Affirmative

25. I now proceed to give reasons to my above findings :

REASONS**POINT NO. 1**

26. It is the case of the Plaintiffs that there exists a property known as "Dadir" surveyed under recent survey No.122/0 and enrolled in Land Revenue Office under Matriz No.855 and is bounded by the boundaries as stated in Para No.2 and 3 of the plaint. It is the case of the Plaintiffs that this property is registered under the name of Baboni Foquir Gauncar for the purpose of assessment. In order to substantiate their case, the Plaintiffs have produced on record the Matriz Certificate along with its translation and it is seen that the property under No.855 known as "Dadhir" or "Daddir" and the boundaries given in the plaint is shown enrolled under the name of one Baboni Foquir Gauncar.

27. In the Written Statement of the Defendants, the Defendants although have admitted that the suit property bears the survey No.122/0, they have disputed the Matriz Certificate. It is the case of the Defendants that they are the co-owners in enjoyment of the said property and the Plaintiffs do not have any right to the suit property. However, the Defendants have failed to produce on record any such documents which could show their possession and co-ownership to the suit property. The Matriz Certificate of Matriz No.855 prima facie shows that it

pertains to the suit property. In the absence of any documents of title from the Defendants, this Matriz Certificate can be considered at this stage to show the possession of the Plaintiffs to the suit property through Shri Baboni Foquir Gauncar. The defendants have not claimed title through Shri Baboni Foquir Gauncar.

28. The Plaintiffs have produced on record Form No.I and XIV of survey No.122/0 wherein the name of late husband of the Plaintiff No.1, i.e. Shri Ganesh Topyo Gaonkar is shown in the occupant's column . Therefore from Form No.I and XIV, at this stage prima facie possession of the Plaintiffs to the suit property along with other co-owners stands established. It is the case of the Defendants that their names are not recorded in survey forms although they are the owners in possession of the suit property and that the name of the late husband of Plaintiff No.1 is wrongly recorded in the occupant's column of the survey records. The Defendants have failed to bring any documents on record to show that there is an erroneous entry which is challenged by them before the appropriate forum or that they have taken any steps to include their names in the survey records. It is settled law that in the Land Revenue Code, there is a presumption of survey records unless the contrary entry is proved. The entries in the survey records are presumed to be

proved and correct unless proved contrary. Therefore, at this stage, the only document which is before the Court is the survey records and as per the survey records, the Plaintiffs are shown as the co-owners of the suit property.

29. It is the case of the Plaintiffs that the suit property is not divided /partitioned by metes and bounds. However, there was an oral partition between the various co-owners and for the last more than 50 years each co-owner is enjoying his part separately and independently without the interference of other co-owners or anybody else. It is the specific case of the Plaintiffs that late Shri Ganesh Topyo Gaonkar was in possession and enjoyment of a specific part lying towards the eastern southern side of the suit property. However, the Plaintiffs failed to give the exact area in possession of the Plaintiffs after the alleged oral partition. There is not even a single affidavit of any co-owner of the said property to show that the suit property was given to be enjoyed and possessed by the other co-owners to the husband of Plaintiff No.1. It is rightly pointed out by the Learned Advocate for the Defendants that the Plaintiffs were bound to show and demarcate this portion of the property and plead specifically the area which is in their possession. However, the failure on the part of the Plaintiffs to give the exact area in their possession would not dis-entitle the Plaintiffs from seeking

an injunction against the Defendants who prima facie do not have any right to the suit property. This is because the Defendants have failed to show any right to the suit property. Their names are not recorded in the survey records, there is no document of title and so also of the possession. Therefore, in my view, the Plaintiffs have shown their ownership, possession and enjoyment of the suit property.

30. The Plaintiffs have produced on record, the birth certificate of Plaintiff No.2, birth certificate of Plaintiff No.4 and the birth certificate of Plaintiff No.6 wherein late Shri Ganesh Topyo Gaonkar is shown as the father of these Plaintiffs. The Plaintiffs have brought on record the death certificate of Shri Ganesh Topyo Gaonkar. The Plaintiffs have produced on record, the sketch showing the site plan. However, this plan is not to scale and also does not bear the signature of the author of the sketch. Therefore, this sketch would not help the Plaintiffs at this stage.

31. It is the case of the Plaintiffs that there are ten cashew trees in the portion which is now encircled with a loose compound wall by the Defendants in the suit property. It is their case that they are enjoying the yields of these cashew trees. To substantiate this case, the Plaintiffs have produced on record the

various receipts wherein they have sold the cashew nuts to Goa Bagayatdar Kharedi Vikri Society Ltd. However, these receipts as rightly pointed out by the Learned Advocate for the Defendants do not show from which property these cashew nuts are taken. These receipts also do not throw light on the case of the Plaintiffs that there are ten cashew nut trees in the encircled portion and that the yields of these trees are enjoyed by them. There is no evidence prima facie to even suggest that the encircled portion of the suit property has ten fruit bearing cashew trees. Therefore, the Plaintiffs have failed to show that the ten cashew trees are enjoyed by them which fall in the encircled portion of the suit property.

32. In the Written Statement of the Defendants, they have taken a specific stand that they are owners in possession of the suit property and that their house and compound wall is existing in the suit property for about 30 years and that they have not carried out any illegal construction in the suit property. This defence of the Defendants at this stage cannot be looked into as the Defendants have failed to produce on record any title documents of the suit property. On the contrary, there is a notice issued by the Village Panchayat of Panchwadi dated 31/12/2013 wherein upon the complaint of Plaintiff No.1, the Defendants are called upon to stop the illegal construction

carried out in survey No.122/0. Therefore, the carrying of the construction in the suit property stands prima facie established by this notice. It is the case of the Plaintiffs that the Defendants have not allowed their Surveyor to take measurements and to draw the sketch and therefore, the application was moved before this Court to click photographs and to take measurements of the illegal construction by the Bailiff for which the Bailiff has clicked the photographs and submitted his sketch. The photographs and the sketch prima facie shows on the face of it that the construction is not 30 years old but it is a completely new construction. From the documents produced by the Plaintiffs, it can be clearly seen that the Defendants have taken a illegal construction in the suit property without any right thereby infringing the proprietary rights of the Plaintiffs to the suit property. Having said so, I conclude this point in the affirmative.

POINT NO.2

33. Needless to mention, when the Plaintiffs have shown a prima facie case in their favour, the balance of convenience also tilts in favour of the Plaintiffs and therefore I conclude this point in the affirmative.

POINT NO.3

34. The Plaintiffs being the owners in possession of the suit property and the Defendants having failed to show their co-

ownership and title to the suit property, irreparable loss and injury will be caused to the Plaintiffs if injunction is not granted. The Defendants are required to be restrained from carrying out any further construction in the suit property so that the suit property is protected from being damaged. However, since the Plaintiffs have failed to show that there are ten cashew trees in the said encircled portion, the prayer of the Plaintiffs to enjoy the yield of the ten cashew trees cannot be granted. The loss and injury which will be caused to the Defendants is much less than the loss and injury which will be caused to the Plaintiffs if the injunction is not granted. Having said so, I conclude this point in the Affirmative.

35. To sum up, the Plaintiffs have shown a prima facie case in their favour, the balance of convenience also tilts in favour of the Plaintiffs and irreparable loss and injury will be caused to the Plaintiffs if the injunction is not granted.

36. In the result, I pass the following:

ORDER

The application for temporary injunction at exhibit D/6 filed by the Plaintiff stands partly granted.

Consequently, pending the hearing and final disposal of the present suit, the Defendant, his agents, servants,

labourers, family members or any other person or persons acting through them or on their behalf are hereby restrained by way of temporary injunction from carrying out any further construction by way of extension to the suit structure and from converting the loose stone compound wall into pukka compound wall by using cement and mortar in the suit property.

Pronounced in the Open Court.

(***Sharmila A. Patil***)
Civil Judge, Junior Division,
PONDA

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