

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.190 OF 2007

ANTONIO LOBO & ANR.

... APPELLANTS

VERSUS

FELIX FERNANDES & ORS.

... RESPONDENTS

O R D E R

Original plaintiffs (appellants herein) are in appeal, by Special Leave. They are aggrieved by the judgment of the High Court of Bombay at Goa whereby the learned Single Judge of that Court partly allowed the appeal of the defendants (respondents herein) and confined the decree passed by the First Appellate Court with regard to the demolition of Structure 'A' only. The prayer regarding demolition of structures 'C', 'D', 'E' have been denied as the High Court was of the opinion that as regards these structures, suit was barred by time. For the sake of convenience, we shall refer the appellants, 'plaintiffs' and the respondents, 'defendants' hereinafter.

The plaintiffs sought for the following reliefs in the suit filed on April 13, 1989 :

"(a) The defendants be ordered to demolish the suit portions marked "A", "C", "D" and "E" in the plan and to restore the suit property in its original condition to the plaintiffs and to close the door opened on the western side.

(b) The defendants, their family members, relatives, servants or any one representing them, be restrained by way of permanent injunction from interfering in any portion of the suit property in any manner whatsoever and/or from doing any construction of whatsoever nature in the suit property."

The aforesaid prayers were founded on the pleading that the defendants (*Mundkars*) constructed the structure 'D' in 1978; structures 'E' & 'C' in October, 1983 and structure 'A' in December, 1987. The plaintiffs averred that the above structures, namely, 'A', 'C', 'D' & 'E' have been constructed by the defendants beyond *mundkarial* area; the plaintiffs asked the defendants to demolish the structures 'C', 'E' & 'D' in 1986 but the defendants refused to demolish the same and constructed another structure 'C' in November, 1987.

The defendants traversed the claim of the plaintiffs and set-up the plea that the structures 'A', 'C' and 'B' constitute one house which is ancestral house of the defendants; the said house was constructed by their ancestors more than hundred years back with the permission of the ancestors of the plaintiffs (*Bhatkar*); the ancestral house collapsed partly due to the heavy flood in 1945 and was re-constructed in the same year. The defendants also set-up a plea that structures 'D' & 'E' were constructed long back and the defendants and their family members have been residing there since 1974.

In light of the pleading of the parties, the Trial Court framed initially three issues and later on framed two additional issues. Issue no.1 is to the following effect :

"1. Whether the plaintiffs prove that they are entitled to get demolition order to the suit portions marked 'A', 'C', 'D' & 'E' as shown in the plan annexed to the plaint?"

While considering the above issue, the Trial Court considered the argument of the defendants that the suit was not within limitation.

The Trial Court accepted the argument of the plaintiffs that the suit was for restoration of possession in the property in its original form and the limitation for such relief is 12 years. The first construction is the structure 'D' which was made in 1978 and, therefore, the suit filed in the year 1989 is within limitation. The Trial Court partly decreed the suit and ordered demolition of the structures excluding the *Mundkarial* area as was demarcated by the *Mamlatdar* in Exh.P-6. The defendants were also restrained by an order of permanent injunction from interfering in any portion of the suit property excluding the *Mundkarial* area as demarcated in Exh.P-6 or from doing any construction of any nature whatsoever in the said area excluding *Mundkarial* area.

Against the judgment and decree of the Trial Court, the defendants preferred First Appeal. The First Appeal was heard by the 2nd Additional District Judge, North Goa, Panaji. After hearing the parties, the First Appellate Court, in exercise of its power under Order XLI Rule 33 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), while dismissing the defendants' appeal, modified the judgment and decree of the Trial Court by granting the plaintiffs the decree as prayed for in the plaint.

The defendants filed Second Appeal before the High Court challenging the judgment and decree of the First Appellate Court. The High Court framed two substantial questions of law, which read as under :

“(a) Whether the trial Court was right in deciding issue no.3, which was an issue on defendants' claim of Mundkarship in respect of the suit structures in view of the specific and express bar on the Civil Court's jurisdiction to decide the said issue in terms of Section 31 (2) of the Goa Daman and Diu Mundkar (Protection from Eviction) Act, 1975.

(b) Whether the Courts below erred in granting the Order of mandatory injunction ordering the demolition of extensions identified under alphabet 'E' and 'C' and the new structure identified under letter 'D' when the suit for the demolition of the suit structures was barred by law of limitation in view of the averments in the plaint.”

As regards substantial question of law (a), the High Court was not convinced with the defendants' argument that the Civil Court's jurisdiction was barred in terms of Section 31(2) of the Goa, Daman and Diu Mundkar (Protection from Eviction) Act, 1975 and answered the said question accordingly.

With regard to substantial question of law (b), the High Court was of the opinion that the suit was barred by time in respect of disputed structures except structure 'A'. The High Court, in this regard, relied upon Article 113 of the Indian Limitation Act, 1963, which provides a period of three years from the date right to sue accrues for filing a suit for which no period of limitation is provided elsewhere in the schedule.

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: 5 :

We have already quoted above the reliefs claimed in the

suit and also the pleadings about construction of disputed structures. The substantive prayer in the suit is for demolition of the structures 'A', 'C', 'D' and 'E'. There is no article in the Limitation Act, 1963 that specifically provides for period of limitation for filing such suit. Article 65 of the Limitation Act, 1963 has no application at all as it provides for a period of limitation where the suit for possession of an immovable property or any interest therein based on title. Since there is no specific Article in the schedule pertaining to the substantive relief claimed in the suit, the residuary Article 113 comes into play. The plaint averments leave no manner of doubt that structure 'D' was constructed by the defendants in 1978; the structures 'C' and 'E' in October, 1983 while the suit for demolition of these structures ('C', 'D' and 'E') has been filed on April 13, 1989, which is apparently time barred.

The view taken by the High Court is, thus, in accordance with law and warrants no interference.

The Civil Appeal is, accordingly, dismissed with no orders as to costs.

.....J.
(R.M. LODHA)

.....J.
(JAGDISH SINGH KHEHAR)

NEW DELHI;
SEPTEMBER 28, 2011