

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 192 OF 2014

MR. VIJAY VITHAL GHATE

... Petitioner

Versus

MR. AZIZ SHAIKH

... Respondent

Shri R. G. Ramani, Advocate for the Petitioner.

Shri P. P. Singh, Advocate for the Respondent.

Coram:- N. M. JAMDAR, J.

Date:- 2nd February, 2015

ORAL ORDER:

By this petition, the petitioner challenges the order passed by the District Judge, Panaji allowing the appeal filed by the respondent, challenging the order of temporary injunction passed by Civil Judge, Senior Division, Mapusa on 30 March 2013.

2. The Civil Judge had restrained the respondent from carrying out any construction of the suit structure on the roof of the respondent without obtaining requisite permissions from concerned authorities. The appellate Court found that since there is a dispute as regard boundaries, it is advisable and necessary that an independent Surveyor is appointed. Accordingly, the appellate Court directed Head Surveyor of Survey Department to inspect the property and take measurements and the Civil Judge was directed to decide the application for temporary injunction afresh.

3. Shri R.G. Ramani, learned Counsel for the petitioner submitted that there was no need for remanding the matter to the Civil Judge as there was no boundary dispute as such. Shri Ramani submitted that there is no direction as to the permission from the concerned authorities and the respondent will be free to carry out the construction if the surveyor report is accepted. Shri P.P. Singh, learned Counsel for the respondent submitted that there is a boundary dispute and measurements will have to be taken.

4. At this stage, what is challenged is the order of remand. The apprehension of the petitioner that the respondent will be entitled to carry out construction without obtaining permission is misplaced. No direction can be issued or implied that a party can put up a construction without permissions. It is clarified that if the Civil Judge comes to the conclusion that the proposed construction does not infringe the right of the petitioner in any manner, the Civil Judge will place the respondent under restraint to carry out any further construction, unless he obtains all requisite permissions.

5. That there exists no boundary dispute is the case of the petitioner.

This position is disputed by the respondent. In any case, if independent Surveyor is appointed the position will be clarified. In the facts and circumstances, the order passed by the District Judge appointing a Surveyor to measure the property cannot be faulted with

and, therefore, the Writ Petition cannot be entertained and it is accordingly rejected. All contentions are kept open. The trial Court will take up the application for temporary injunction for expeditious disposal.

N. M. JAMDAR, J.

NH