

**IN THE HIGH COURT OF BOMBAY AT GOA**

WRIT PETITION NO. 204 OF 2015

MRS. GANGABAI DATTARAM PALYEKAR  
AND 6 ORS.,

... Petitioners

Versus

MRS. YOGITA YESHWANT PALYEKAR AND  
ANR.,

... Respondents

Mr. Valmiki Menezes, Advocate for the petitioners.  
Mr. Amey Jagdish Sinai Kakodkar, Advocate for the respondent  
no.1.

Coram:- M. S. SANKLECHA, J.

Date:- 27th April, 2015

P.C.

On the application of Mr. Menezes, the learned Counsel for the petitioners, the respondent no.2 is deleted from the present proceedings.

2. The challenge in this petition is to an order dated 25/02/2015 passed by the Civil Judge, Junior Division at Pernem, allowing the application of the respondent no.1 i.e. the original plaintiff to visit the disputed property with police protection, to enable the taking of the photographs of the alleged construction done in the suit property and also its measurement.

3. The grievance of the petitioners is that the Trial Court, by the impugned order dated 25/02/2015, allowed the application of the respondent no.1, after having recorded that a similar application made by the respondent no.1 earlier, had been withdrawn as the Court had showed reluctance to allow it. It is submitted that there

has been no change in facts, warranting a fresh application. Besides, the impugned order seems to have been passed in undue hurry after rejecting the petitioners' application for time to file a reply.

4. As against the above, respondent no.1 states that the application was made by her only because the petitioners had violated the directions of the Trial Court given on 21/01/2015 to the petitioners to maintain status-quo till filing of reply to injunction application. Therefore, it is submitted that no interference with the impugned order is called for.

5. I find that the impugned order dated 25/02/2015 has been passed on an application substantially identical to an earlier application by the respondent no.1, which was withdrawn only because the Court was reluctant to grant the same. This is without any liberty to file a fresh application. Therefore, the impugned order is not sustainable and is set aside.

6. However, the issue, which still remains to be examined is whether the petitioners had violated the directions of the Court in having carried out construction activity, in spite of the directions of status-quo given by the Court on 21/01/2015. It is alleged by the respondent no.1 that the petitioners/ original defendants have breached the directions given by the Trial Court. This is an issue, which has to be examined and for that purpose, it is best that the Trial Court considers the appointment of a Court Commissioner to visit the site with the representatives of the petitioners and the respondent no.1, for the purposes of examining whether or not there has been

any violation on the part of the petitioners of the directions given by the Trial Court on 21/01/2015 i.e. to maintain status-quo.

7. Mr. Kakodkar, the learned Counsel appearing for the respondent no.1 states that he shall file an application for appointment of Court Commissioner before the Trial Court within two days from today. It is directed that a copy of the application will be served upon Mr. Menezes, who appears for the petitioners/ original defendants before this Court and the same will be considered as notice to the petitioners.

8. The Trial Court is directed to dispose of the application filed by the respondent no.1 within 10 days of it being filed. The petitioners are directed to file her reply, if any, to the application given by the respondent no.1, within five days of the receipt of the same, with a copy to the respondent no.1.

9. The petition stands disposed of with the above directions.

The parties to act on an authenticated copy of this order.

M. S. SANKLECHA, J.

SMA