

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 300 OF 2014

MR. MELCHIOR FERNANDES AND ANR., ... Petitioners
Versus
MR. ANTHONY F. FERNANDES AND 2
ORS., ... Respondents

Mr. Cliff Fernandes, Advocate for the Petitioners.
Mr. S. Redkar holding for Advocate Almeida Coutinho Cleofato
Garrett for Respondent no. 1

Coram:- M. S. SANKLECHA, J.

Date:- 23rd March, 2015

ORAL ORDER:

This petition assails the order dated 4/2/2014 passed by the District Judge-2, South Goa, Margao. By the impugned order dated 4/2/2014, a Court Commissioner was appointed to find out whether there exists an alternate access through the property of the appellants and whether it has obstruction.

2. The appointment of Court Commissioner arose on account of an application for contempt of Court filed by the respondents (original plaintiffs). The respondents have filed a suit claiming that they had easmentary rights through the property of the appellants. The Trial Court, the First Appellate Court and this Court in Second Appeal recorded the fact that the petitioners (original defendants) has provided an alternate access to the respondents having width of 5

metres and no inconvenience in any way would be caused to the parties if the respondents used that access. It is the respondents' case that inspite of the order of this Court, that the appellants would give alternate access of 5 metres through their property, as access/ approach. The respondents have not complied with the directions of this Court. The appellants denied the same. In view of the above, the learned Trial Judge appointed a Commissioner in terms of Order 26 Rule 9 C.P.C. to find out the exact position with regard to the access available to the respondents through the petitioners' property.

3. In the impugned order, the Commissioner was was appointed to find out whether there exists alternate access available to the respondents and if so, whether the same has been obstructed. At this stage, no interference is called for to the impugned order. In view of the above, the writ petition is dismissed. No order as to costs.

M. S. SANKLECHA, J.

ap/-