

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 752 OF 2015

SHRI. ULHAS DATTA NAIK AND ANR., ... Petitioners
Versus
SHRI. UMESH CHANDU NAIK AND 3
ORS., ... Respondents

Mr. Jagannath Jayant Mulgaonkar, Advocate for the Petitioners.
Mr. Shailesh Redkar, Advocate for the Respondent Nos. 1, 2 and 4.

Coram:- C. V. BHADANG, J.

Date:- 29th October, 2015

P.C.

Heard the learned Counsel for the parties.

2. By this petition, the petitioners, who are the plaintiffs in R.C.S. No.4/2009/A, pending on the file of the learned Civil Judge, Senior Division, Quepem, are challenging the order dated 05/09/2015 below application (Exh.71). By the impugned order, the learned Trial Court has rejected the application Exh.71 for stay of the suit under Section 10 of C.P.C.

3. It appears that the property of the respondents/defendants is situated to the northern side of the petitioners/plaintiffs' property. R.C.S. No.51/2008/A is filed by the petitioners on the ground that the respondents/ defendants have effected construction without keeping the mandatory setback. Subsequently, the petitioners filed R.C.S. No.4/2009/A on the ground that the respondents have constructed a

compound wall, which is in the nature of encroachment in the property of the petitioners. Both the suits at the relevant time were pending before two different Courts at Quepem.

4. By application Exh.71, the petitioners sought stay of R.C.S. No.4/2009. The learned Trial Court has found that the subject matter of suit in the subsequent suit, is not directly and substantially in issue in the earlier suit and as such, Section 10 of C.P.C. would not apply.

5. On hearing the learned Counsel for the parties and on perusal of the record, I find that the parties in both the suits are same. In earlier suit, the claim is based on the ground that the respondents have not kept mandatory setback while in the subsequent suit, the ground is that while constructing the compound wall, the respondents have made some encroachment. In such circumstances, it would be appropriate that both the suits are tried by the same Court.

6. The learned Counsel subsequent to the passing of the impugned order submit that now both the suits are transferred to the same Court namely, the 'A' Court. The learned Counsel appearing for the petitioners submits that the petitioners would move an application for consolidation of both the suits.

7. In the circumstances, the order refusing to stay the suit under Section 10 of C.P.C. would not require any interference. In such

circumstances, the Writ Petition is disposed of. The petitioners would be at liberty to move the trial Court for consolidation of both the suits. If, such an application is filed, the trial Court shall independently decide the same after hearing the parties, in accordance with law.

8. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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