

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 864 OF 2015.

1. Mr. Alleluia Barnabe Caeiro,
s/o Francisco Rosario Caeiro,
retired, 66 years of age,
and his wife;
2. Mrs.Elma Caeiro,
d/o Guilherme Adelino D'Cruz,
60 yrs of age, retired,
Both residents of H.No.618(1),
Opposite Vaddem Club,
Vasco-da-Gama,
Mormugao Goa. Petitioners.

Versus

1. Mr. Wilson Caeiro,
Son of Francisco Rosario Caeiro,
63 yrs of age, retired seaman,
and his wife;
2. Mrs. Immaculada Caeiro,
d/o Anselmo Colaco,
57 years of age, housewife,
both r/o H.No.26,
Caeiro vaddo, Velim,
Salcete Goa.
3. Mrs. Naidu Rosita Caeiro,
Wife of late Ivo R. Caeiro,
d/o Inacio Costancio Almeida,
66 years of age, housewife.
4. Mrs. Lona Caeiro e Fernandes,
d/o Ivo Remedios Caeiro
40 yrs of age,
and her husband;
5. Mr. Sergio Fernandes,
s/o Mezino Fernandes,
43 yrs of age,
6. Mr. Leslie Caerio,
s/o Ivo Remedios Caeiro,
39 yrs of age

7. Mrs. Libia Caeiro e Alvares,
d/o Ivo Remedios Caeiro,
36 yrs of age,
and her husband;
8. Mr. Ernest Alvares,
s/o Thomas Alvares
42 yrs of age
Defs 2 to 8 residents of H.
No.3/2008
Las Palmar Hsg. Estate,
Near Trimurthi Hospital,
Gogol, Fatorda,
Margao Goa. Respondents.

Mr. Menino Pereira, Advocate for the petitioners.
Mr. V. Menezes, Advocate for the respondent nos. 1 and 2.

Coram:- K. L. WADANE,J.

Reserved on:4th December, 2015.

Pronounced on :5th December, 2015.

JUDGMENT

Heard Mr. Menino Pereira, learned Advocate
appearing for the petitioners and Mr. V. Menezes, learned
Advocate appearing for the respondent nos. 1 and 2.

2. Rule made returnable forthwith.

3. Heard by consent of learned counsel appearing for
the respective parties. Mr. V. Menezes, learned Advocate waives
notice on behalf of the respondent nos. 1 and 2.

4. The present Writ Petition is filed by the original defendant nos. 7 and 8/petitioners herein seeking to quash and set aside the order dated 14.10.2015 passed by the Civil Judge, Junior Division, "E" Court Margao, in Regular Civil Suit No. 341/2010/E, by which the objection raised by the petitioners vide Exh. 21 is rejected.

5. By Judgment and preliminary decree dated 1.3.2011, the trial Court sent preliminary decree to the Collector directing it to submit plan and area adjustment statement. The plaintiffs have $\frac{1}{2}$ share, where as the defendant nos. 1 to 6 have $\frac{1}{4}^{\text{th}}$ share and the defendant nos. 7 and 8 have $\frac{1}{4}^{\text{th}}$ share. The Collector accordingly drew the plan partitioning the suit property as per shares of the parties and submitted a plan and area adjustment statement vide Exh.15. The plaintiffs filed their say at Exh.16 and stated that they have no objection to the plan submitted by the surveyor however, there is a common well belonging to the plaintiffs and the defendants which is not been shown in the plan, submitted by the surveyor. The defendant nos. 1 to 6 filed their say at Exh. 19 and have stated that they have no objection to the area report submitted by the surveyor, however for more convenient purpose the defendants object to the plan submitted by the surveyor. The defendant nos.7 and 8 also submitted their objections, however, the defendants agree to the area report but they object to the plan prepared by the

commissioner since it does not reflect the factual structure at site i.e well, likewise there are other structures which are not shown in the plan.

6. Considering the rival contentions and the arguments canvassed, the learned Trial Judge has accepted the proposal submitted by the Collector. In the present petition the petitioners has prayed to refer the matter to another commissioner in terms of Order 26 Rule 14(2) and (3) of CPC.

7. I have heard arguments of Mr. M. Pereira, learned Counsel appearing for the petitioners and Mr. V. Menezes, learned Counsel appearing for the respondent nos. 1 and 2.

8. During the course of arguments, the learned Counsel appearing for the petitioner has drawn my attention to the factual position appearing in the suit property by referring to the map. The learned Counsel appearing for the petitioners has argued that there is no access for the petitioners to reach their property, if proposed plan is accepted. He further argued that some of the structures have not been mentioned in the map prepared by the Collector, therefore, matter is required to be referred again to another Commissioner.

9. As against this, Mr. Menezes, learned counsel

appearing for the respondent nos. 1 and 2 has pointed out that the area allotted to the petitioners is as per their share and is acceptable for them. So there is basically no dispute about proposed area to be allotted to the respective parties as per the preliminary decree. By referring to the map, Mr. Menezes, learned counsel appearing for the respondent nos.1 and 2 has pointed out that there is existing road towards western side of the suit property and northern strip of 326 square metres is proposed to be allotted to the petitioners and its western portion is abutting to the road. So there is ample space for the petitioners to reach the road towards western side. During the course of arguments both the defendants have referred to the map which is on record at Exh. "X". The learned Counsel appearing for the petitioners has pointed out that common well is at a northern side, mentioned by letter "7". He also pointed out a structure shown in letter "4" and a structure "Cross" by letter "9". As per the preliminary decree, the petitioners are entitled to $\frac{1}{4}$ th share in the suit property and looking to the construction mentioned by letter "4", it appears that its some portion comes within the area proposed to be allotted to the petitioners so he can demolish or remove that portion of the structure so there will be no hurdle to reach the western side road. The structure shown by letter "9" is extremely to the eastern side. The only question is about the well. It appears that $\frac{1}{2}$ portion comes within the area and $\frac{1}{2}$ portion is beyond

the area. Further more, admittedly, parties have agreed to keep this well common.

10. In such circumstances, plan proposed by the Collector appears to be more feasible and convenient to all the parties and, therefore, the learned Trial Court has rightly considered all these aspects. Therefore, I do not find any reason to disturb the findings given by the learned Trial court. Hence, Writ Petition stands dismissed with no order as to costs.

11. Rule stands discharged with no order as to costs.

K. L. WADANE, J.

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