

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 857 OF 2015.

Shri Poto Mahadev Gaonkar
(Since deceased) through LR
and 13 ors. Petitioners.

Vs

Smt. Savitri Pot Gaonkar and
4 ors. Respondents.

Mr. K. Kerkar, Advocate for the petitioners.
Mr. V. P. Thali, Advocate for the respondent nos. 2, 2A, 3 and 4.

Coram:- K. L. WADANE,J.

Reserved on: 11th December, 2015.

Pronounced on:15th December, 2015.

ORDER

The present Writ Petition is filed by the petitioners seeking to set aside the order passed below Exh.119 in Regular Civil Suit No. 12/2010/A/(NEW) by the Civil Judge, Senior Division, Quepem, by which the application of the petitioners/plaintiffs to permit them to cross examine the surveyor has been rejected.

2. I have heard the arguments of Mr. K. Kerkar, learned Counsel appearing for the petitioners and Mr. V. P. Thali, learned Counsel appearing for the respondent nos.2, 2A, 3 and 4.

3. By Order dated 19.7.2012, the learned Adhoc District Judge-1, FTC-1, South Goa, Margao, allowed the Regular Civil Appeal No. 153/2011 with following directions:-

“The impugned judgment, order and decree dated 30.7.2011 is quashed and set aside and the matter is remanded back to the trial Court with the direction to appoint a surveyor, for which the necessary order be passed regarding the costs of the surveyor, in order to ascertain whether the property names as “Soktolem Poiquim” alias “Valisorod” bearing land registration no. 7983 situated at Undorna, Molcornem of Quepem Taluka corresponds to survey no. 6/1 of Village Undorna in Quepem Taluka and decide the suit afresh based on the report of the surveyor and after hearing the arguments afresh of the parties. Both the parties are directed to appear before the trial Court on 4.8.2012 at 10.00 a.m.”

4. Further it is seen that in pursuance of the directions of the First Appellate Court, the trial Court appointed the surveyor and instructed him to submit a report. Accordingly, the surveyor has submitted his report. Upon such submission of the report, the petitioners filed an application requesting therein to permit them to cross examine the surveyor. The

request of the petitioners turned down by the impugned order stating that the trial Court has acted within the scope of the directions given by the First Appellate Court.

5. I have also gone through the order passed in Regular Civil Appeal No.153/2011 and the impugned order.

6. From the order of the First Appellate Court, it appears that the trial Court was directed to appoint a surveyor in order to ascertain whether the property namely "Soktolem Poiquim" alias "Valisorod" bearing land registration no. 7983 situated at Undorna, Molcornem of Quepem Taluka corresponds to survey no. 6/1 of Village Undorna in Quepem Taluka and after hearing the arguments decide the suit afresh based on the report of the surveyor.

7. Since there are no other directions of the Appellate Court except to appoint surveyor and hear the arguments after surveyor's report, therefore, the learned Trial Court has not travelled beyond the scope and directions issued by the First Appellate Court.

8. Looking to the reasons recorded in the impugned order, I do not think that the order needs to be disturbed that too by invoking powers of this Court under Section 227 of the

Constitution of India. The learned Trial Court has perfectly acted within the scope and directions given by the First Appellate Court, therefore, no interference is called for. Hence, Writ Petition stands dismissed with no order as to costs.

9. Petitions stand disposed of accordingly.

K. L. WADANE, J.

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