

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

WRIT PETITION NO. 329 OF 2016

MR. RAMNATH GOPAL NAIK BORKAR  
(DECEASED) THROUGH LRS AND 3 ORS., ... Petitioners

Versus

MR. VASANT SHANKAR NAIK (SINCE  
DECEASED) THROUGH LRS AND 2 ORS., ... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.  
Mr. Kaif Noorani, Advocate for the Respondent nos. 1(a) to 1(c)  
& 2 U/LAS.

Coram:- F. M. REIS, J.

Date:- 6th December, 2016

**ORAL ORDER**

Heard Mr. A. D. Bhobe, learned Counsel appearing for the Petitioners and Mr. Noorani, learned Counsel appearing for the Respondent nos. 1(a) to 1(c) and Respondent no. 2.

2. The challenge in the above Petition is to the Order passed by the learned Executing Court dated 15.09.2015, whereby the proceedings for Execution filed by the Petitioners came to be disposed of.

3. Mr. Bhobe, learned Counsel appearing for the Petitioners, has submitted that the dispute raised by the Petitioners is that the learned Executing Court was not justified to pass the impugned Order as, according to the Petitioners, inspite of the Decree of injunction, the Respondents-Judgment Debtors have encroached

in an area of about 10 square metres in the property of the Petitioners. Learned Counsel further submits that the learned Executing Court has erroneously discarded the evidence of the Expert to come to the conclusion that the Petitioners have failed to establish the encroachment. Learned Counsel has taken me through the impugned Order and pointed out that the learned Judge has erroneously misread the evidence recorded in the course of proceedings under Section 47 of the Civil Procedure Code and, as such, the impugned Order deserves to be quashed and set aside.

4. On the other hand, Shri Noorani, learned Counsel appearing for the Respondents, has pointed out that the learned Judge has rightly appreciated the material on record and come to the conclusion that the Petitioners have failed to establish the alleged claim of encroachment. Learned Counsel further pointed out that the house of the Respondents itself is in a very dilapidated and in a pathetic condition and, as such, the allegations of the Petitioners are totally frivolous. Learned Counsel has taken me through the photographs produced by the Petitioners to point out that there is no apparent encroachment shown in such photographs as carried out by the Respondents.

5. I have considered the submissions of the learned Counsel. I have also gone through the records. The alleged encroachment

claimed by the Petitioners is to the extent of 10 square metres. On perusal of the photographs produced by the Petitioners, I find that in line with the house of the Respondents, there is a compound wall located towards the northern side of the house occupied by the Respondents. The alleged claim of the Petitioners of encroachment is along the boundary of the property running from north to south over the property of the Petitioners. On perusing the said photographs, I find that the construction of the Respondents on the eastern side is in line with the compound wall located in the north to south direction of the property of the Petitioners herein.

6. In such circumstances, the question of contending that there is any encroachment as claimed by the Petitioners, cannot be accepted. Be that as it may, considering that the permanent injunction is in operation against the Judgment Debtors-Respondents herein, it is made clear that the Respondents shall not carry out any further construction activity beyond the existing wall and the said compound wall as shown in the photograph which is marked 'X' for identification.

7. With the above observations, the Petition stands disposed of.

F. M. REIS, J.

arp/\*