

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 304 OF 2014

SHRI GURUDAS DEVAPPA PHALDESSAI
AND 3 ANR.,

... Petitioners

Versus

SHRI SANDEEP VAIKUNT FAL DESSAI
AND 30 ANR.,

... Respondents

Adv. Almeida Coutinho Cleofato Garrett for the Petitioners.

Coram:- S. B. SHUKRE, J.

Date:- 2nd February, 2016

ORDER:

Heard learned counsel for the petitioners.

2. None appears for the contesting respondents i.e. respondent no.1, 16 and 17, although they have been duly served long back and have been given several opportunities to make their submissions before this Court.

3. It is seen from the order impugned in this petition, which is the order dated 18/11/2013 passed in Misc. Civil Appeal No.23/2013 by the learned District Judge-II, South Goa, Margao, that the learned Judge found that the description of the stone quarry as given by the petitioner is not correct and that the survey plan relied upon by the petitioner, shows that the stone quarry lies in survey no. 24/0, although it is the case of the petitioners that it lies in survey no.24/1.

Of course there are other grounds as well on which the appeal has been allowed. But, at this stage there is no need to consider the other grounds, in view of the arguments canvassed on behalf of the petitioners.

4. The argument advanced by the learned counsel for the petitioners is that there has never been really any dispute about description of the property. Survey no.24/1, in respect of which an injunction has been claimed by the petitioners, is commonly owned by the petitioners and the contesting respondents and that there is no such survey as survey no.24/0, which is in existence. He further submits that these contesting parties did not raise any ground that the survey plan shows quarrying activity as going on in survey no.24/0 incorrectly. He further submits that it is the contention of these respondents that the quarrying activity is going on, but it is going on not in survey no.24/1, but in survey no.22/2. Such being the rival contentions, learned counsel for the petitioners further submits that the first Appellate Court ought to have considered mentioning of survey no.24/0 in the plan as an obvious mistake and accordingly, proceeded to have considered the impugned order in accordance in law.

5. In view of these contentions, it would be appropriate to remand the case back to the first Appellate Court to reconsider the entire case afresh in accordance with law by taking into account the rival contentions as pointed out earlier.

6. In the result, the writ petition is allowed. The impugned order is quashed and set aside. The case is remanded back to the first Appellate Court for reconsideration of the appeal afresh in accordance with law, in the light of the arguments of the contesting parties. The matter shall be disposed of in accordance with law as expeditiously as possible. Parties to appear before the first Appellate Court on 22/2/2016 at 10 a.m.

7. Petition is allowed in these terms and disposed of. No costs.

S. B. SHUKRE, J.

ap/-