

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

WRIT PETITION NO. 514 OF 2016

MR. PREMANAND ANAND ASOLKAR. ... Petitioner  
Versus  
MRS. SHANTI ANTONIO MASCARENHAS  
AND 4 ORS., ... Respondents

Mr. Valmiki Menezes, Advocate for the petitioner.

Coram:- C. V. BHADANG, J.

Date:- 6th May, 2016

P.C.

Heard the learned Counsel for the petitioner.

2. By this petition, the petitioner is challenging the order dated 18/03/2016 passed by the learned Civil Judge, Junior Division at Pernem in C.M.A.No.7/2014 in R.C.S. No.8/2005.

3. By the impugned order, the learned Trial Court in exercise of the powers under Sections 152 and 153 read with Section 151 of the Code of Civil Procedure, has directed correction of the decree by deleting the word "sq." as appearing in prayer clauses (a) and (c) of the plaint and directing that the decree by way of corrigendum be drawn accordingly by deleting the words "sq." from prayer clauses (a) and (c). The respondents had filed the aforesaid suit which was decreed on 21/12/2005. By the said decree, the petitioner and other

defendants and anybody on their behalf were restrained from doing any construction in the suit property without keeping the setback of 1.5 (one and half) 'square metres' of property. As per clause (c) of the said decree, the petitioner and other defendants were directed to demolish the northern side of the suit structure, thereby maintaining the setback of 1.5 (one and half) square metres of the property from the said compound.

4. By the impugned order, the learned Trial Court has now directed correction which means that 1.5 as indicated in the decree, is linear distance expressed in metres and not in square metres.

5. On hearing the learned Counsel appearing for the petitioner and on perusal of the impugned order, in which, reliance inter alia is placed on the decision of the Kerala High Court in J. SAROJINI @ NESAMMA AND ORS VS. NARAYANI SAROJINI, reported in [2008(1) KLJ 139 and on the decision of Hon'ble Apex Court in the case of A. RAJAMAULI VS. A.V.K.N. SWAMY, reported in [2001(5) SCC 181], I do not find that any case for interference is made out in exercise of extraordinary jurisdiction of this Court. It is now well settled that this Court can interfere only where it is demonstrated that the impugned order exhibits jurisdictional error, resulting into manifest injustice.

6. The learned Counsel for the petitioner submits that the decree

passed was an ex-parte decree and the petitioner chose not to challenge the same as it was unexecutable. It is submitted that by virtue of the correction now ordered, the petitioner would be desirous of challenging the said decree. The learned Counsel also submits that the Trial Court will have to draw a fresh decree in view of the correction.

7. A perusal of the impugned order shows that the Trial Court has directed that a decree by way of corrigendum be drawn accordingly by deleting the word 'sq.' from prayer clauses (a) and (c).

8. In that view of the matter, it is obvious that the Trial Court would be required to draw the decree in terms of the impugned order.

No opinion can be expressed at this stage as to the merits of any challenge that may be raised by the petitioner to the corrected decree, if at all the same is challenged. The contention of the petitioner on merits, if any, as may be available in law are left open.

9. With this, no case for interference is made out and the Writ Petition is, accordingly, dismissed.

C. V. BHADANG, J.

SMA