

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 536 OF 2015**

1. Shri Anand Ganpat Parab, major of age, s/o Ganpat Parab, r/o H. No. now known, Ward No. 3, Near Gawas Flour Mill, Headland Sada, Mormugao.
2. Smt. Aparna Parab, major of age, w/o Shri Anand Parab, r/o H. No. not known, Ward No. 3, Near Gawas Flour Mill, Headland Sada, Mormugao.
3. Shri Satish Ganpat Parab, Major of age, s/o Ganpat Parab, r/o H. No. not known, Ward No. 3, Near Gawas Flour Mill, Headland Sada, Mormugao.
4. Smt. Shubada Parab, Major of age, w/o Shri Satish Parab, r/o H. No. not known, Ward No. 3, Near Gawas Flour Mill, Headland Sada, Mormugao.

.... Petitioners

Versus

1. Shri Laxman Shiva Parab, s/o Siva Parab, Major of age, r/o H. No. 47/11, Ward No. 3, Near Gawas Flour Mill, Headland Sada, Mormugao.
Represented herein by his next friend Shri Rajendra Laxman Parab, Aged 45 years, married, r/o H. No. 47/11, Ward No. 3, Near Gawas Flour Mill, Headland Sada, Mormugao.
(Since deceased)

- 1(a) Ms. Laxmi Laxman Parab, Widow of Laxman Parab, major of age.
- 2(a) Mr. Chandrashekar L. Parab, Son of Laxman Parab, major of age, married.
- 2(b) Mrs. Anjali C. Parab, Wife of Chandrashekar L. Parab, major of age, married.
- 3(a) Mr. Shiva Laxman Parab, Son of Laxman Parab, major of age, married.
- 4(a) Mr. Rajendra L. Parab, Son of Laxman Parab, major of age, married.
- 4(b) Mrs. Shaila R. Parab, Wife of Rajendra Parab, major of age, married.
All resident of H. No. 47/11, Ward No. 3, Near Gawas Flour Mill, Headland Sada, Mormugao.
- 5(a) Mrs. Nayan Prabhakar Talekar, Wife of Prabhakar Talekar, major of age, married.
- 5(b) Mr. Prabhakar Talekar, Son of Dattaram Talekar, major of age, married.
Both resident of Room No. 2, Mrunal Building, Ashok Nagar, Kandivalli East, Mumbai 1001.
Represented herein by their Power of Attorney Holder, Mr. Chandrashekar L. Parab, Son of Laxman Parab, major of age, married.
Resident of H. No. 47/11, Ward No. 3, Near Gawas Flour Mill, Headland Sada, Mormugao.
- 6(a) Mrs. Rati Shetye, Wife of Fhondur alias Dashrat Shetye, Major of age, married.

6(b) Mr. Fhondur alias Dashrat Shetye, Son of Mr. Raghoba Shetye, Major of age married.

Both resident of Susheela Sankul, Orulem, Vasco-da-Gama, Goa.

.... Respondents

Mr. E.O. Mendes, Advocate for the Petitioners.

Mr. Abhay Nachinolkar, Advocate for the Respondents.

CORAM:- S.B. SHUKRE, J.

DATE:- 1st FEBRUARY, 2016.

ORAL JUDGMENT:

Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The objections raised by learned Counsel for the petitioners give rise to two questions: one, whether in the execution proceeding, the executing Court has jurisdiction to pass an order in the nature of temporary injunction invoking provision of Section 151 of C.P.C. and second whether the executing Court while serving notice of the application filed under Section 51 of C.P.C. to the petitioners ought to have served the notice of main execution proceeding and without serving the notice of main execution proceeding, ought not to have proceeded with passing of any order under Section 151 of C.P.C.

3. These objections can also be taken before the Executing Court as the order impugned herein is not the final order. Therefore if a direction is issued to the executing Court to hear and consider the above referred objections while disposing of the application (Exhibit-6) should suffice the purposes of this petition.

4. It is noted that the learned Counsel for the legal heirs of respondent no. 1 has delivered a copy of the execution application to the learned Counsel for the petitioners, which has been accepted on behalf of the judgment debtors by the learned Counsel for the petitioners as service of main execution proceeding.

5. In the circumstances, it is directed that the above referred objections shall be considered and decided appropriately by the Executing Court while finally disposing of the application (Exhibit-6) filed under Section 151 of C.P.C., which application shall be disposed of within three weeks from the date of the order.

6. Writ Petition is allowed in these terms. No costs.

S. B. SHUKRE, J.

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