

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 404 OF 2009**

1. Mr. Sandip Ganesh Ghatwal, son of late Ganesh Arjun Ghatwal, Major of age, service (Technician in Chowgule & Co. in Shigao Mine), Resident of Poirra, Mayem, Bicholim-Goa. (Judgment Debtor No.3).
2. Mr. Suraj Ganesh Ghatwal, son of late Ganesh Arjun Ghatwal, Major of age, Businessman (Contractor in Chowgule & Co. in Shirgao Mine), Resident of House No. 1216, Poirra, Mayem, Bicholim-Goa. (Judgment Debtor No.5).
3. Mrs. Leena Mahesh Gadekar, Daughter of late Ganesh Arjun Ghatwal, wife of Mahesh Madhukar Gadekar, Major of age, service (working in Private Company), Resident of New Vaddem, Near Sai Baba Temple, Vasco-da-Gama. (Judgment Debtor No.7).
4. Mrs. Deepa Dinkar Kalagutkar, Daughter of late Ganesh Arjun Ghatwal, wife of Dinkar Kalangutkar, major of age, Government Service (working in Directorate of Industries & Mines, Panaji), Resident of Valshi, Housing Board Colony,

Bicholim-Goa. (Judgment Debtor No.8).

5. Mrs. Chaya Prakash Vazakar, Daughter of late Ganesh Arjun Ghatwal, wife of Prakash Vazakar, major of age, Government Service (working in Government Primary School), Resident of Verde, Sanquelim, Vazari-Goa. (Judgment Debtor No.10).

.... Petitioners

Versus

1. Shri Gurudas Arjun Ghatwal, son of late Ganesh Arjun Ghatwal, Major of age, married, service, resident of House No. 1216, Poirra, Mayem, Bicholim-Goa.

Legal heirs of Respondent No.1:

- a) Shubhangi Gurudas Ghatwal, wife of deceased respondent no. 1, major in age.
- b) Jitendra Gurudas Ghatwal, son of deceased respondent no. 1, major in age.
- c) Navina Jitendra Ghatwal, wife of Jitendra Gurudas Ghatwal, major in age.
- d) Kumari Gayatri Gurudas Ghatwal, daughter of deceased respondent no. 1.

All residents of House No. 1216, Poirra, Mayem, Bicholim-Goa.

2. Shri Ashok Arjun Ghatwal, son of late Ganesh Arjun Ghatwal, major of age, married, service, Residing at Poirra, Bicholim-Goa.
3. Smt. Vishwavati Vishwanath Gaunkar, wife of Vishwanath Gaunkar, 65 years old, house wife, Resident of Vaigani, Mayem, Bicholim-Goa.
4. Smt. Laxmi Surya Kerkar, wife of Surya Kerkar, Major, married, Resident of Kitla, Aldona, Bardez-Goa.
5. Smt. Sita Ramchandra Mandrekar, wife of Ramchandra Mandrekar, Major, housewife, Resident of Sakhali, Karapur.
6. Smt. Anandi Achutanand Nagvenkar, wife of Achutanand Nagvenkar, Housewife, Resident of Baga, Calangute, Bardez-Goa.
7. Ms. Subhangi Gurudas Ghatwal, major, Resident of Poirra, Bicholim, Goa.
8. Ms. Ashma Ashok Ghatwal, major, Resident of Poirra, Bicholim, Goa.
9. Shri Vinayak Vishwanath Gaunkar,

10. Smt. Vinanti Vinayak Gaunkar,
11. Shri Dnyaneshwar V. Gaunkar,
12. Ms. Vaheed D. Gaunkar,
13. Shri Satyawar V. Gaunkar,
14. Smt. Sunanda S. Gaunkar,
All residents of Vaigini,
Mayem, Bicholim, Goa.
15. Smt. Daya Naik,
16. Shri Datta Naik,
Both residents of Kundai, Goa.
17. Smt. Bharati Ghatwal,
18. Shri Kashinath Ghatwal,
Both residents of Sirgao,
Bicholim, Goa.
19. Shri Surya Kerkar, Resident of
Quitla, Aldona, Bardez, Goa.
20. Shri Ramchandra Mandrekar,
Resident of Karapur, Sanquelim,
Goa.
21. Shri Atchutanand Nagvekar,
Resident of Baga, Calangute,
Bardez, Goa.
(The Respondents 1 to 21 are
Decree Holders)

22. Smt. Shobhavati Ganesh Ghatwal,
wife of late Ganesh Arjun
Ghatwal, Resident of House No.
1216, Poira, Mayem, Bicholim-
Goa. (Judgment Debtor No. 2)
23. Smt. Shila Sandeep Ghatwal,
wife of Sandeep Ganesh Ghatwal,
Resident of House No. 1216,
Poira, Mayem, Bicholim-Goa.
(Judgment Debtor No. 4)
24. Smt. Sushal Suraj Ghatwal, wife
of Suraj Ganesh Ghatwal,
Resident of House No. 1216,
Poira, Mayem, Bicholim-Goa.
(Judgment Debtor No. 6)
25. Shri Dinkar Kalangutkar,
Resident of Valshi, Housing
Board Colony, Bicholim, Goa.
(Judgment Debtor No. 9)
26. Shri Prakash Vazarkar, Resident
of Virdi, Sanquem, Vazari, Goa.
(Judgment Debtor No. 11) Respondents

Shri Prasheen Lotlikar with Ms. Aditi Naik and Ms.
Gemini Xettigar, Advocates for the Petitioners.

Shri J. Coelho Pereira, Senior Advocate with Shri
Somnath Karpe and Shri Vinod Korgaonkar, Advocates
for the Respondents.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 5th JULY, 2016

PRONOUNCED ON:- 15th OCTOBER, 2016

JUDGMENT:

The challenge in this petition is to the order dated 18.03.2009 passed by the Executing Court, whereby application (Exhibit-27) filed by the respondents-decree holders for attachment of the salary of the petitioners/judgment debtors, has been allowed.

2. The brief facts are that, now deceased, Arjun Ghatwal was a tenant in respect of various properties including the paddy fields situated at Poirra, Mayem, which came to be acquired by the Government, for laying of the Konkan Railway broad gauge line. Arjun Ghatwal had appointed his son, Ganesh Ghatwal (original defendant no. 1) as his attorney to look after the affairs of the properties by attending the office of the Land Acquisition Officer. On the strength of the Power of Attorney,

Ganesh Ghatwal collected Rs.19,47,114.08 as compensation on behalf of Arjun Ghatwal and an amount of Rs. 5,86,778.42 as the balance compensation. Arjun Ghatwal passed away on 12.07.1994. The respondents-decree holders filed Special Civil Suit No. 20/1997/A, for recovery of the amount of compensation, which suit was decreed on 08.07.2002. The defendants/judgment debtors filed First Appeal No. 258/2002, before this Court challenging the said judgment and decree. This Court has dismissed the appeal on 27.04.2004. The decree holders have now initiated execution proceedings before the learned Civil Judge Senior Division at Bicholim, in which the application for attachment of the salary (Exhibit-27) of the judgment debtors, has been allowed by the impugned order.

3. I have heard Shri Lotlikar, the learned Counsel for the petitioners and Shri Pereira, the

learned Senior Counsel for the respondents.

4. It is contended on behalf of the petitioners that the impugned order is contrary to the judgment and decree dated 27.10.2004 passed by this Court in First Appeal No. 258/2002, as also the judgment dated 02.02.2006 in Writ Petition No. 456/2005. Specific reliance is placed on paragraph 16 of the judgment in First Appeal No. 258/2002, in order to submit that this Court has held that the petitioners /judgment debtors as legal representatives would be liable to pay the decretal amount to the extent of the assets received by them from Ganesh Ghatwal, who had received the compensation on behalf of Arjun Ghatwal. It is submitted that in the order dated 02.02.2006, in Writ Petition No. 456/2005, this Court had observed that there was no question of proceeding under Order 21, Rule 41 of CPC and the matter was remanded to the Executing Court to deal with the application filed by the petitioners on

22.11.2004, in accordance with law. It is submitted that the Executing Court instead of going into the aspect, whether the petitioners would be liable to satisfy the decree, has passed an order directing attachment of the salary, which is not permissible.

5. On the contrary it is submitted by the learned Senior Counsel for the respondents that the petitioners were brought on record as legal representatives of the original appellant in the first appeal. It is submitted that the decree having attained finality, on dismissal of the first appeal, the petitioners cannot contend that they are not liable to satisfy the same.

On behalf of the respondents, reliance is placed on the decision of the Supreme Court in the case of **Bal Kishan Vs. Om Parkash and Another, AIR 1986 SC 1952**, and particularly, paragraph 3 thereof. It is submitted that the Executing Court has rightly ordered attachment of the salary and the impugned

order does not require interference.

6. I have carefully considered the circumstances and the submissions made. The question whether the petitioners are the legal representatives of the original defendant no. 1-Ganesh Ghatwal, stands concluded. It is significant to note that the petitioners had themselves approached this Court in first appeal as legal representatives of the appellant-Ganesh Ghatwal. Thus, the only question is whether the petitioners are liable to satisfy the decree, which was passed against the deceased judgment debtor no.1. This Court in paragraph-16 of the judgment dated 27.10.2004 in First Appeal No. 258/2002, has observed thus:

"In our view, the subsequent death of deceased defendant no. 1 cannot change the complexion of the decree. To what extent his legal representatives would be liable to pay would be a matter which the

Court executing the decree would be concerned with. Needless to say, the legal representatives would be liable to pay the decretal amount to the extent of the assets received by them from the said defendant no. 1."

7. It appears that an application (Exhibit-8) was filed by the petitioners, purportedly under Section 47 of the CPC, for dismissal of the execution case on the ground that the petitioners/judgment debtors are not liable to pay anything under the decree. The Executing Court by order dated 26.09.2003, had directed an enquiry on the ground that there is a controversy in respect of the petitioners being legal representatives of the deceased judgment debtor no. 1. The decree holders filed an application (Exhibit-12) claiming that no such enquiry was necessary. The said application (Exhibit-12) was allowed on 02.07.2005, holding that the judgment debtors have admitted themselves to be the legal representatives of Ganesh Ghatwal i.e.

judgment debtor no. 1 vide their application dated 27.10.2004 filed before this Court. Thereafter, the decree holders filed an application (Exhibit-16), for examination of the judgment debtors under Order XXI, Rule 41 of CPC. The Executing Court by order dated 12.10.2005 has allowed the said application. This order was challenged by the petitioners in Writ Petition No. 456/2005, which was decided on 02.02.2006. A perusal of the said order shows that it was conceded on behalf of the respondents/decreed holders that the question of proceeding under Order XXI, Rule 41 of CPC, does not arise. This Court observed that however, the present petitioners will have right to raise objection as to the extent of their liability in respect of the decretal amount. In that view of the matter, order dated 12.10.2005 was set aside and the Executing Court was directed to deal with the application dated 22.11.2004 filed by the respondents-decreed holders, which is application Exhibit-16. The respondents thereafter

filed an application (Exhibit-27) for attachment of the salary of some of the judgment debtors, to which the petitioners filed a reply (Exhibit-30). In paragraph 3 of the reply, the petitioners claim that they are not liable under the decree, unless and until it is shown that they have received the money from the original debtor, which he had received from the Land Acquisition Officer. It was contended that if, the decree holders can show that the petitioners are in receipt of any money, which was the subject matter of the civil suit, then only the petitioners can be held liable.

8. It can thus be seen that although, this Court had observed while deciding the first appeal and the writ petition that the extent of the liability of the petitioners is for the executing Court to decide, no specific objection was raised that the petitioners have not received any assets from the deceased judgment debtor no. 1.

9. It is contended on behalf of the petitioners that there is nothing on record to show that the petitioners had received any share out of the amount, which was the subject matter of the dispute. Secondly, it is contended that the salary of the petitioners is their personal asset, which cannot be attached.

10. Insofar as the first contention is concerned, it is not necessary for the petitioners to be liable, to satisfy the decree, to show that the petitioners had received any share of the amount, which was the subject matter of the suit. Thus, this contention has rightly been negated by the Executing Court. This Court neither in first appeal nor in writ petition has taken a view that the petitioners would be liable only if, they have received a part of the amount, which was the subject matter of the suit. Thus, even if the petitioners have received any other assets from the deceased,

they would be liable to satisfy the decree. The petitioners have failed to show or even plead that they have not received any assets from the deceased judgment debtor no. 1. Once the petitioners are held liable to satisfy the decree, their salary can be justifiably attached. In that view of the matter, the contention cannot be accepted. The Executing Court has found and to my mind rightly so, that after the decision of Writ Petition No. 456/2005, the petitioners were expected to plead and establish that they have not received any assets from the deceased judgment debtor no. 1. The petitioners vide their reply (Exhibit-30) have merely reiterated the contentions earlier raised, which were not accepted.

11. Having gone through the impugned order, I do not find that it suffers from any infirmity, so as to warrant interference.

The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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