

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 226 OF 2010

1. Smt. Deodita Rebello,
major in age,
married, housewife,
and her husband.
2. Shri Nazareth Celso Rebello
Son of Sebastiao Francisco Rebello,
represented through his
duly constituted attorney
Mrs. Deodita Rebello,
Both formerly residents of
House No.42, now demolished
and both presently staying at
House No.40, belonging to
Mrs. Augusta Araujo e Fernandes,
Maina Curtorim, Salcete Goa.
3. Shri Anthony Rebello alias
Antonio Rebello,
Son of Sebastiao Francisco Rebello,
widower, major in age,
service, represented by his attorney
and sister-in-law,
Smt. Irene Rebello,
resident of House No.39,
Maina, Curtorim, Salcete Goa. ... Petitioners

Versus

Smt. Vicentina Fernandes,
widow of Antonio Mario Fernandes,
aged 64 years,
housewife, resident of Maina Vaddo,
Curtorim, Salcete Goa. ... Respondent

Mr. D. Pangam, Advocate for the petitioners.

Mr. V. P. Thali, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 16th November, 2016

ORAL JUDGMENT

Heard Mr. D. Pangam, learned counsel appearing for the petitioners and Mr. V. P. Thali, learned counsel appearing for the respondent.

2. The challenge in the above petition is to an order passed by the learned Lower Appellate Court whereby an application for temporary injunction filed by the respondent came to be allowed *inter alia* reserving a right of access to the benefit of the respondent herein.

3. Mr. Pangam, learned counsel appearing for the petitioners has strenuously argued that there is no right of access through the property of the petitioners surveyed under No.467/12 of Macazana Village. The learned counsel further pointed out that the learned Lower Appellate Court has misconstrued the affidavit filed in support

of the defence by the petitioners to erroneously come to the conclusion that there was an admission on the part of the petitioners in respect of the subject access claimed by the respondent. Mr. Pangam, learned counsel further pointed out that there is a laterite stone wall over the alleged access claimed by the respondent in the suit. The learned counsel further pointed out that the learned Judge has exercised its jurisdiction with material irregularities which would call for interference of this Court in the present Writ Petition.

4. On the other hand, Mr. V. P. Thali, learned counsel appearing for the respondent submits that the respondent has claimed a right of easement by prescription through the property belonging to the petitioners surveyed under no.467/9 of the same Village. The learned counsel further pointed out that the learned Lower Appellate Court has rightly appreciated the evidence on record to come to the conclusion that the respondent has prima facie established her case. The learned counsel as such points out that there is no case made out for interference in the impugned order.

5. I have considered the submissions of the learned counsel

and I have also gone through the records. When asked as to what is the stage of the suit filed by the respondent in the year 2008, it was pointed out by the learned counsel that the evidence of PW1 is complete and the matter is posted for further evidence of the respondent. It is undisputed fact that the injunction is operating from the year 2008. In such circumstances, instead of proceeding to examine the merits of the rival contentions, I find that in the interest of justice, it would be appropriate to dispose of the above Writ Petition by directing the learned Civil Judge Junior Division, Margao, to dispose of Regular Civil Suit No.66/2008 as expeditiously as possible and in any event within one year from the date of the receipt of this order. Needless to say that the learned Judge shall decide the suit on its own merits without being influenced by any observations or prima facie findings rendered during the course of the disposal of the application for temporary injunction. All contentions of both the parties on merits are left open. Rule is made absolute in the above terms. The petition stands disposed of accordingly.

F. M. REIS, J.

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