

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

**WRIT PETITION NO. 776 OF 2016**

ASSENTINA FERNANDES.

... Petitioner

Versus

MR. JOAQUIM ANTONIO VAZ.

... Respondent

Mr. Sagar Gurudas Dhargalkar, Advocate for the Petitioner.

Mr. Cliff Fernandes, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 25th August, 2016

P.C:

Heard the learned Counsel for the petitioner and the learned Counsel for the respondent, for sometime.

2. The petitioner, who is the original defendant is challenging the order dated 08.08.2016 passed by the learned District Judge, by which the application for stay of the judgement and decree dated 08.07.2016, passed by the learned Trial Court, has been rejected.

3. The learned Trial Court has decreed the suit filed by the respondent, thereby restraining the petitioner from interfering with the suit access or preventing the development of the suit access.

4. The learned Counsel for the petitioner has pointed out that the application filed by the petitioner for declaration of Mundkar, is pending before the learned Mamlatdar. It is submitted that if, the suit

access is developed, the same will cause damage to the south western corner of the house of the petitioner and will adversely affect the mundkarial rights of the petitioner as to the adjoining area. It is submitted that there are no pleadings about the motorable access and about the nature of the easement on the basis of which the suit access is claimed.

5. On the contrary, the learned Counsel for the respondent pointed out that the Trial Court on the basis of the evidence of the Surveyor (DW-4) has found that the road would be at a distance of one metre from the south western corner of the house of the petitioner. He pointed out that the petitioner is yet to be declared as a Mundkar and the original Bhatkar, in the sale deed executed in favour of the respondent has mentioned about the suit access of three metres.

6. On hearing the learned Counsel for the parties, I find that the appeal has already been expedited by the Appellate Court and is now stated to be fixed on 16.09.2016. There is an order of status quo operating in this petition. Thus, I find that it would be appropriate that the petition is disposed of in terms of the said order.

7. In the result, the parties shall maintain status quo as to the existence and user of the suit access, during the pendency of the appeal. The learned Appellate Court shall decide the appeal as expeditiously as possible. Parties to co-operate for early disposal of

the appeal. The petition is disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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