

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 84 OF 2015

Mr. Antonio J. B. Lobo,
son of late Dr. Jose Lobo,
major of age, advocate,
Rua.Mg. Rodolfo Dalgado,
Feira Alta, Mapusa, Bardez,
Goa and anr.

... Petitioners

Versus

Mr. Felix Fernandes,
major of age, driver,
r/o H. No.6/203-A,
Cobrawado, Calangute,
Bardez, Goa and 5 others,

... Respondents

Mr. Ryan Da Piedade Menezes, Advocate for the Petitioners.

None for Respondent nos 1 to 4.

Mr. G. Shirodkar, Advocate for Respondent no.5.

Coram:- C. V. BHADANG, J.
Date:- 23rd September, 2016

ORAL ORDER:

The challenge in this petition at the instance of the petitioners/Decree Holders is to the order dated 16/5/2014 passed by the Executing Court in Special Execution Case

No.10/2012/C. By the impugned order, the Executing Court has dismissed an application for amendment seeking demolition of an additional construction, allegedly made by the respondents/judgment debtors, during the pendency of the suit.

2. The brief facts are that the petitioners had filed Special Civil Suit No.157/89 inter alia seeking the relief of mandatory injunction to demolish the suit portions marked as "A, C and E" in the plan annexed to the plaint and to restore the suit property to its original condition and to close the door opened on the western side. The suit was partly decreed by the learned trial Court by judgment and order dated 31/7/1999, which was challenged by the respondents in appeal. Interestingly, in the appeal filed by the respondents the suit came to be decreed in its entirety which was further challenged by the respondents in Second Appeal No.63/2000 before this Court. This Court by a judgment and order dated 20/1/2006 partly allowed the appeal in the following terms:

"Consequently, this Second Appeal deserves to succeed partly in that in

terms of prayer (a) the plaintiffs would be entitled for the demolition only of structure "A" identified by the plaintiffs and not structures "C", "D" and "E", regarding which, filing of the suit was clearly time barred. Considering the facts, there will be no order as to costs.

2. Prayer clause "a" of the plaint reads thus:

(a) The Defendants be ordered to demolish the suit portions marked "A", "C", "D" and "E" in the plan and to restore the suit property in its original condition to the plaintiffs and to close the door opened on the western side.

3. It can thus be seen that ultimately the suit stood partly decreed to the extent of the portion marked as "A" in the plan annexed to the plaint.

4. The petitioner sought to execute the decree, wherein an application for amendment came to be filed, contending that the respondents have made certain additions which have been noticed after the filing of the execution case. The

learned Trial Court by the impugned order has dismissed the said application on the ground that although the structures were constructed during the pendency of the suit, the same was not brought on record. In that view of the matter, the application has been dismissed.

5. I have heard learned counsel for the parties and perused record.

6. It is not disputed by the learned counsel for the petitioners that the alleged constructions/additions is to the structure "B". Thus the amendment could not have been allowed. This is because the petitioner can execute the decree passed in terms of the judgment passed in Second Appeal by this Court. As noticed earlier, this Court has partly decreed the suit only in terms of the portion "A". The Executing Court can only execute this decree. Thus any addition/alterations to the structure other than structure "A" cannot be subject matter of the Execution Application. For this reason alone, the amendment sought cannot be allowed. The petition is without any merit and is accordingly dismissed

with no order as to costs.

C. V. BHADANG, J.

ap/-