

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1007 OF 2016

SHRI. SUBHASH S. NAIK AND 2 ORS., ... Petitioners
Versus
SHRI. VISHWAS SADASSIVA NAIK AND 2
ORS., ... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Petitioners.
Mr. Vilas P. Thali, Advocate for Respondents no. 1 and 2.

Coram:- F. M. REIS, J.

Date:- 18th November, 2016

P.C.:

Heard Shri A. D. Bhobe, learned Counsel appearing for the Petitioner and Shri V. P. Thali, learned Counsel appearing for the Respondents no. 1 and 2.

2. The Petitioners, who are not parties to the proceedings in Execution and are the sons of the original Judgment Debtors, have taken exception to the Order passed in Execution Application No. 1/2006 dated 17.09.2016 whereby the application moved by the Respondent under Order XXI Rule 32(1) and (5) r/w. Section 51 of Civil Procedure Code was allowed and the Judgment Debtors were directed to remove the vehicles parked in the suit property within 15 days from such order.

3. Mr. Bhobe, learned Counsel appearing for the Petitioners pointed out that the Petitioners had moved this Court on earlier occasion, on

the ground that the Petitioners were not original Judgment Debtors to the Decree in favour of the Respondents, which petition was allowed by an Order dated 07.08.2015 as the Respondents sought withdrawal of the application filed by them to that effect. It is further pointed out that after the said Order, in terms thereof the Respondents filed application under Order XXI Rule 32(1) and (5) r/w. Section 51 of Civil Procedure Code directing the Judgment Debtors in Execution Proceedings as well as the Petitioners to remove the vehicles parked in the subject property. Learned Counsel further points out that as the Petitioners are not parties to such proceedings, the question of issuing any directions to the Petitioners without being given an opportunity to be heard is totally misplaced. Learned Counsel has also taken me through the cause title filed alongwith the certified copy of the impugned Order to point out that the Petitioners are shown as Judgment Debtors no. 2, 3 and 4 when they are not parties to the said proceedings. Learned Counsel further pointed out that the Petitioners have not parked any vehicle in the property Survey No. 35/1 of Village Sanvordem. Learned Counsel, as such, points out that the impugned Order as against the Petitioners deserves to be quashed and set aside. It is also pointed out that the subject property has not been appropriately identified.

3. On the other hand, Mr. Thali, learned Counsel appearing for the Respondents no. 1 and 2 the Decree Holders, has pointed out that the application filed by the Respondents no. 1 and 2 was only against

Respondent no. 3 under Order XXI Rule 32(1) and (5) r/w. Section 51 of Civil Procedure Code. It is further submitted that the cause title as produced by Petitioners, is on account of error committed by the learned Executing Court as, according to him, the Judgment Debtor 2, 3 and 4 shown in the cause title are not parties to the said Execution proceedings. Learned Counsel further pointed out that the learned Judge has come to the conclusion that the Respondent no. 3 who is the Judgment Debtor is attempting to frustrate the Decree in favour of Respondents no. 1 and 2 by parking the vehicles through the property of the Petitioners herein, who are his sons. Learned Counsel further pointed out that the Petitioners are not justified to park any vehicle in the suit property under Survey no. 35/1 and as such, there is no reason to interfere in the impugned Order.

4. I have considered the submissions of the learned Counsel and have gone through the records.

5. The apprehension of the Petitioners that the impugned Order also has directions to the Petitioners would no longer survive in view of the submission of Mr. Thali, learned Counsel appearing for the Decree holders/Respondents no. 1 and 2 herein that the Petitioners are not parties to such proceedings. The names of the Petitioners are accordingly ordered to be deleted from the cause title of the Execution Proceedings. Apart from that, perusal of the impugned Order clearly points out the Judgment Debtor to be Respondent No. 3

herein. In such circumstances, contention of the Petitioners that there is any order against the Petitioners cannot be accepted. Apart from that, Mr. Bhobe, learned Counsel appearing for the Petitioners, states that the Petitioners are not parking any vehicles in the suit property under survey No. 35/1 in Sanvordem Village. As such, the apprehension of the Respondent no. 1 that the Decree is sought to be frustrated by the Respondent no. 3 also no longer survives. As regards the contention of Mr. Bhobe learned Counsel appearing for the Petitioners that the property has not been appropriately identified, it is too late now to accept such contention as, admittedly, the property has been identified as Survey No. 35/1 and, as such, the location is clearly identified. Hence, the said contention stands rejected.

5. Accepting the statement of the learned Counsel, I find there is no case made out to interfere in the Impugned Order. The petition stands rejected accordingly.

F. M. REIS, J.

msr