

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 844 OF 2009

1. Shri Shripad Vithoba Shetkar,
of full age, married, service
2. Smt. Kalyani Shripad Shetkar,
of full age, housewife,
Both residing at Gharbhat,
Near A. J. De Almeida High School,
Ponda Goa. ... Petitioners

Versus

1. Shri Suryakant Keshav Toraskar,
of full age, married, service,
residing at Gharbhat,
Near A.J. De Almeida,
High School, Ponda Goa.
2. Shri Rama Vithoba Shetkar,
of full age, unmarried,
3. Shri Anant Vithoba Shetkar,
of full age, married, service,
both residing at Gharbhat,
Near A. J. De Almeida High School,
Ponda Goa. Deleted as per Order
dated 19.07.2012 in
MCA No. 533/2012.
... Respondents

Mr. J. Godinho, Advocate for the petitioners.

Mr. S. P. Munj, Advocate for the respondents.

Coram:- F. M. REIS, J.

Date:- 15th November, 2016

ORAL JUDGMENT

Heard Mr. J. Godinho, learned counsel appearing for the petitioners and Mr. S. P. Munj, learned counsel appearing for the respondents.

2. The above petition takes exception to an order dated 25.11.2009 whereby the objections raised by the petitioners to the proceedings for execution came to be rejected.

3. Mr. J. Godinho, learned counsel appearing for the petitioners has submitted that the decree for execution is a consent decree whereby different terms were amicably settled in terms thereof. It is further pointed out that as per Clause 1 of the consent decree, both the parties were liable to meet the expenses of the retaining wall which was constructed in the year 1989 by sharing such expenses. The learned counsel further pointed out that by Clause 2 of the said consent terms, the petitioners were liable to leave an access having a width of 0.85

metre for the benefits of the respondents in their property surveyed under No.20/1(part) of Ponda Village. It is further pointed out that the directions of the learned Judge while considering the objections raised that the decree itself was vague as the cardinal point to put up a compound wall was not correct and as such the decree could not be executed are erroneous. The learned counsel further pointed out that during the pendency of the above petition, it was submitted that the matter be amicably settled and as such the earlier counsel for the respondents along with the learned counsel appearing for the petitioners visited the site and agree to locate the subject access having a width of 0.85 metre towards the eastern side of the property belonging to the petitioners. The learned counsel further pointed out that in view of such arrangement, the petitioners constructed a compound wall reserving an access of 0.85 metre leading from the existing steps for the benefit of the subject access to the respondents. The learned counsel further pointed out that after meeting the expenses of putting up a compound wall, the respondents without any justification resciled from such arrangement and erroneously contended that the access is not located in the property of the petitioners. The learned counsel has taken me through the photographs as well as the plan on record to point out that

the subject access of 0.85 metre is in fact located in the property of the petitioners.

4. On the other hand, the learned counsel appearing for the respondents has submitted that in terms of Clause 2 of the consent decree, it clearly shows that the right of access reserved for the benefit of the respondents having a width of 0.85 metre is in the property belonging to the petitioners. The learned counsel further pointed out that a substantial portion of such access as provided by the petitioners is located in the property of a third person and as such according to him the compound wall has not been constructed on the eastern boundary of the property belonging to the petitioners. The learned counsel further pointed out that the learned Judge has rightly taken this aspect into consideration while rejecting the objections raised by the petitioners. The learned counsel as such submits that the petition be rejected.

5. I have considered the submissions of the learned counsel and I have also gone through the records. In fact, on perusal of the records, it cannot be disputed that the parties have sought time to settle the matter and agree to proceed at loco to identify the access as reserved

in Clause 2 of the consent decree dated 21.03.1989. Apparently, after such visit the petitioners acted upon the arrangement arrived at between the parties and in fact, constructed a compound wall in terms of the consent decree. While putting up such compound wall, it is not disputed that the respondents did not raise any objection to the location of such compound wall. It is only thereafter the respondents raised objections that the compound wall is not located in the property of the petitioners but in the property of the adjoining owner. On perusal of the photographs at page 48 of the paper book, it is not disputed by the learned counsel appearing for the respondents that the retaining wall in terms of Clause 1 of the consent terms has been duly constructed by the petitioners and the respondents at the site. On minutely examining the location of such retaining wall, it clearly reveals that the retaining wall is in line with the steps as depicted in the photographs at page 48 of the paper book. It is also not disputed that the access reserved was in line with the steps to enable the respondents to have an access to proceed to the main road. In such circumstances, considering the location of the retaining wall, which was admittedly constructed by the petitioners and the respondents, it is very late in the day for the respondents to now contend that even the retaining wall was partly in the property of the

adjoining owner. The fact that the reserved access was to lead to the steps as shown in the photographs at page 48 of the paper book is not in dispute. It is also not disputed that the distance from the compound wall now constructed to the edge of the retaining wall is more than 0.85 metre. In such circumstances, I find that the contention of the learned counsel appearing for the respondents that the access provided in terms of Clause 2 of the consent decree is located in the property of the adjoining owner cannot be accepted. But however, it is pointed out by the learned counsel appearing for the respondents that such unobstructed access reserved for the benefits of the respondents in terms of Clause 2 of the consent decree cannot be obstructed by any person whomsoever. Mr. Godinho, learned counsel appearing for the petitioners upon instructions states that in case any obstructions are raised, the petitioners would be bound to provide 0.85 metre wide access in terms of the consent decree. As pointed out herein above, looking into the material on record, I find that the petitioners have in fact complied with Clause 2 of the consent decree dated 21.03.1989.

6. Subject to the above, accepting the statement of the learned counsel appearing for the petitioners upon instructions, the consent

decree stands satisfied. Consequently, Rule stands disposed of in the above terms. The petition stands disposed of accordingly.

F. M. REIS, J.

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