

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 8 OF 2017

IN

WRIT PETITION NO. 385 OF 2016

MRS. AURA FERNANDES.,

... Applicant

Versus

JOAO JOSE NEPOMOCENO COELHO (SINCE
DEC) THR. HIS LRS. AND 4 ORS.,

... Respondents

Mr. Cliff Fernandes, Advocate for the applicant.

Coram:- C. V. BHADANG, J.

Date:- 6th June, 2017

P.C.

Heard the learned Counsel for the applicant.

2. This is an application for review of the order dated 19/01/2017 passed in W.P. No.385/2016. The only contention raised on behalf of the applicant is that this Court, while deciding Second Appeal No.91/2009, has directed the Trial Court to hold an enquiry under Order XX Rule 12 of C.P.C. and determine the mesne-profits. Reliance is placed on para 6 of the judgment dated 14/02/2016, in order to contend that the enquiry as to mesne-profits would also include enquiry as to the area, which the applicant is entitled to purchase.

3. I have carefully considered the submissions made and gone through the record.

4. It is apparent that the learned Mamlatdar had confirmed Plan No.II admeasuring 200 square metres, which is the

entitlement of the applicant. This was affirmed in appeal, against which, the aforesaid Writ Petition was filed. This Court, after considering the fact that the structure, which was directed to be demolished by the Civil Court, cannot be included in the area, which is sought to be purchased and after finding that the impugned order does not show any jurisdictional error resulting into manifest injustice, has dismissed the petition. The contention, as raised on behalf of the applicant, is misconceived. All that this Court has said while deciding Second Appeal No.91/2009 is that the Trial Court could not have decreed mesne-profits in the absence of an enquiry under Order XX, Rule 12 of C.P.C. The enquiry, which is now directed, is limited to determine the mesne-profits. It would be significant to note that while deciding the Second Appeal, this Court has not interfered with the order of demolition of the subject structure, which is a distillery. In such circumstances, there is no error apparent on the face of record in the impugned judgment. Civil Application is, accordingly, dismissed.

C. V. BHADANG, J.

SMA