

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.248 OF 2017**

Mrs. Gizala Magdum Khazi,
alias Gizala Begum alias Gizala
Madgum Khazee, alias Gizala
Khazi, daughter of Mr.Madgaum
Khazee alias Magdooom Khazee
resident of H.No.119/2,
Nagmoddem, Navelim, Salcete
Goa.

.. Petitioner

Vs

1. Mr. Belarmino T. E. Rebello,
son of late Eduardo Rebello,
resident of House no.119,
Nagmodem, Navelim,
Salcete- Goa
 2. Additional Collector-I,
(South Goa)
Mathany Saldanha Administrative
Complex, Margao, Goa.
- .. Respondents

Mr. Carlos Alvares Ferreira, Advocate for the petitioner.

Mr. V. Rodrigues, Advocate for respondent no.1.

Mr. Priyanka Kamat, Additional Government Advocate for
respondent no.2.

Coram :- M. S. SONAK, J.

DATE :- 19nd April, 2017

ORAL JUDGMENT :-

Heard Mr. C. A. Ferreira for the petitioner, Mr.

Rodrigues for respondent no.1 and Ms. Kamat for respondent no.2.

2. Rule. At the request of the learned Counsel for the parties, rule is returnable forthwith.

3. The challenge in this petition is to the judgment and order dated 07/06/2016 made by the Additional Collector-I, South Goa, District Margao. The operative part of which reads thus :

“In view of the above, the Order pronounced by the Joint Mamlatdar-III of Salcete is quashed and set aside and the Appeal dismissed as the petitioner has no right to claim the access in the property of the respondent as no access is visible on the Original Plan of Sale Deed dated 10/08/2009.”

4. The petitioner, who was the appellant before the Additional Collector had impugned the order of the Joint Mamlatdar dated 25/08/2014, by which the Joint Mamlatdar, had stayed the proceedings before him, instituted under the Mamlatdar's Court Act, 1966, by invoking the provisions contained in Section 10 of the C.P.C. The Additional Collector, by the impugned order, has been pleased to set aside the order made by the Joint Mamlatdar, thereby accepting that this was not a fit case

for grant of stay of the proceedings. However, the Additional Collector, has gone much further and decided the petitioner's claim to access on merits and held that the petitioner has no right to claim access in the property of the respondent, as no access is visible on the original plan of Sale Deed dated 10/08/2009.

5. Mr. Ferreira submits and perhaps rightly that the finding / conclusion recorded by the Additional Collector to the effect that the petitioner has no right to claim access in the property of the respondent, is a finding/ conclusion in excess of jurisdiction.

6. In the appeal, the Additional Collector was merely required to consider whether the order of the Joint Mamlatdar, staying the proceedings before him, was legal and proper. The Additional Collector, in such an appeal, was neither justified nor required to go into further issue on merits and record the aforesaid finding/ conclusion. Accordingly, such finding/ conclusion recorded by the Additional Collector, is required to be set aside, the same being in excess of jurisdiction. The same is accordingly set aside.

7. It is further clarified that the aforesaid finding/

conclusion has not been set aside on merits, but it is set aside on the ground that the Additional Collector, in the appeal before him, ought not to have gone into this issue at all. Accordingly, the contentions of the parties are left open for determination in the Regular Civil Suit No.279/2012/E, to which reference is made hereinafter.

8. Although the impugned order is required to be interfered to the aforesaid extent, it transpires that the petitioner has already instituted Regular Civil Suit No.279/2012/E, seeking for an access in the suit property. It also transpires that initially, respondent no.1 had not been impleaded as party in this suit. However, presently, respondent no.1 has been duly impleaded as a party in the said civil suit. All the disputes between the parties can be suitably adjudicated or sorted out in the Civil Suit, which is undoubtedly a more comprehensive remedy. In the circumstances, the matter was adjourned to enable Mr. Ferreira to take instructions as to whether the petitioner would insist upon the proceedings under the Mamlatdar's Court Act, now that the suit has been instituted for the very same relief and further respondent no.1 has also been impleaded as the defendant in the suit.

9. Mr. Ferreira has obtained instructions from the

petitioner, who is present in the Court to the effect that the petitioner will not proceed with the petition under Mamlatdar's Court Act i.e. case No.JM-III/MCA/01/2014 before the Joint Mamlatdar-III, Salcete, Margao. Mr. Ferreira adds that this shall, however, be without prejudice to pursue for the same relief in Regular Civil Suit No.279/2012/E. Accepting this statement, the proceedings in case No.JM-III/MCA/01/2014 before the Joint Mamlatdar -III, Salcete, are hereby disposed of. The parties to place the authenticated copy of this order before the Joint Mamlatdar, so that the learned Mamlatdar can formally dispose of the said proceedings.

10. The petitioner has taken out a civil application for interim relief in Regular Civil Suit No.279/12/E in the Court of Civil Judge, S.D. at Margao. The learned Counsel for respondent no.1 states that reply to this application, has already been filed and if not, the same will be filed within a period of two weeks from today.

11. This petition is accordingly disposed of with the following order :

- (i) The impugned order dated 07/06/2016 to the extent it records a finding/ conclusion that the petitioner has no right to claim access in the property of the respondent, is set aside, as being in excess of

jurisdiction;

(ii) The case no. JM-III/MCA/01/2014 before the Joint Mamlatdar-III, is disposed of as aforesaid, with liberty to the petitioner to pursue Regular Civil Suit No.279/2012/E.

(iii) The learned Trial Judge is directed to dispose of the application for interim relief as expeditiously as possible and in any case, latest by 30/06/2017.

(iv) The Trial Judge is directed to dispose of the application for interim relief as well as the suit on their own merits and in accordance with law;

(v) Parties shall apply for directions in the matter of filing of reply/ rejoinder, etc.

(vi) This Court has not adverted to the merits of the matter and, therefore, all the contentions of the parties are left open.

(vii) Rule is disposed of in the aforesaid manner.

(viii) There shall be no order as to costs.

(ix) All concerned to act on basis of authenticated copy of the order.

M. S. SONAK, J.

SMA