

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 58 OF 2017

IN

STAMP NUMBER MAIN NO. 2615 OF 2016

MR. MARIANO SALIO ESTIBEIRO., ... Applicant
Versus
MRS. IDA ASSUMPTION AND 8 ORS., ... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Applicant.
Mr. C. A. Coutinho, Advocate for the Respondent no.8.

Coram:- F. M. REIS, J.

Date:- 10th March, 2017

P.C.

Heard Mr. Nigel Da Costa Frias, learned Counsel appearing for the Applicant and Mr. C. A. Coutinho, learned Counsel appearing for the Respondent no. 8.

2. This is an application to seek interim directions to the Respondents to maintain the status quo ante as was existing on the date of the filing of the above Second Appeal.

3. Mr. Nigel Da Costa Frias, learned Counsel appearing for the Applicant, has pointed out that the dispute between the parties is with regard to a claim of access by the Applicant over the property belonging to the Respondents surveyed under no. 139/3. It is further pointed out that after the impugned Judgment came

to be passed, the Respondent has placed a line of rubble stones over the disputed access on 02.03.2017 thereby impinging the user of such disputed access to go to the main road. It is further pointed out that the urgency in seeking the relief is as the statue of Our Lady is expected to be brought to the residential house of the Applicant which is located in the property surveyed under no. 139/1. The learned Counsel further pointed out that in case the stones placed by the Respondents are not removed, the traditional path to bring the statue of Our Lady to the house of the Applicant would be severely affected.

4. On the other hand, Shri C. A. Coutinho, learned Counsel appearing for the Respondent no. 8, disputes the said contention and pointed out that stones were placed in January 2016 after the Judgment came to be passed by the Lower Appellate Court thereby dismissing the Suit of the Applicants and vacating the injunction granted by the Trial Court. Learned Counsel further pointed out that the property where the house of the Applicant is situated abuts to the main road and, as such, the question of using the disputed access is not at all justified. Learned Counsel further submits that the contentions of the Applicant as such that the stones were placed on 02.03.2017 is a false and erroneous statement.

5. I have considered the submissions of the learned Counsel. I

have also gone through the records. The admitted position is that the Respondents admit that stones were placed after the impugned Judgment came to passed dismissing the suit filed by the Applicant. No doubt, there is a dispute as to whether such stones were placed on 02.03.2017 or in January 2016 as claimed by the Respondents but the fact remains that the status quo at the site has changed after the impugned Judgment was passed by the learned Judge.

6. No doubt, on perusal of the Survey Plan brought to my notice by the learned Counsel appearing for the Respondents, the property surveyed under no. 139/1 abuts the road nevertheless, it is contended by Mr. Nigel Da Costa Frias, learned Counsel appearing for the Applicant, that in view of a partition between the co-heirs, the portion allotted to the Applicant is landlocked and does not touch the road. As such, without going into the merits of the rival contentions and keeping all the contentions of both the parties open, without prejudice to the rights and contentions of both the parties and in the peculiar facts and circumstances of the case, the Respondents are directed to provide an unobstructed access to the Applicant on 11.03.2017 and 12.03.2017 of the disputed access situated in survey no. 139/3 so as to facilitate the visit of the statue of Our Lady to the house of the Applicant situated in the property surveyed under no. 139/1. This arrangement is only tentative and shall not

prejudice the rival contentions in the appeal.

7. With the aforesaid directions, the application stands disposed of.

8. Authenticated copy of this Order be issued to the parties in accordance with law.

F. M. REIS, J.

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