

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 289 OF 2017

MRS. MEDHA NAIK AND ANR., ... Petitioners
Versus
MR. MOOSA ALI AND 2 ORS., ... Respondents

Mr. Ryan Da Piedade Menezes, Advocate for the petitioners.

Coram:- F. M. REIS, J.

Date:- 3rd April, 2017

ORAL ORDER :

Heard Mr. R. Menezes, learned counsel appearing for the petitioners.

2. The challenge in the above petitioners is to an order passed by the learned Additional District Judge dated 20.02.2017 whereby an application filed by the petitioners to enable the petitioners to remove the debris to complete the commission ordered by the learned Judge came to be dismissed.

3. Mr. R. Menezes, learned counsel appearing for the petitioners submits that though the injunction order is in favour of the petitioners as the dispute is raised by the respondents herein of the existence of the subject septic tank, it was found necessary to appoint a Commissioner to visit the site. It is

further pointed out that the commission could not be completed as the Commissioner found some debris dumped at the subject site. It is further pointed out that as such the learned Judge was not justified to pass the impugned order refusing permission to the petitioners to remove the debris to implement the order appointing the Commissioner. The learned counsel further submits that the Commissioner report with regard to the existence of such septic tank is very much necessary to decide the matter in controversy and as such according to him the learned Judge has committed a jurisdictional error in refusing the relief sought by the petitioners.

4. I have considered the submissions of the learned counsel and I have also gone through the records. The learned Judge has noted that such exercise is not necessary to decide the matter in controversy at this stage. In any event, the matter under consideration is the application for temporary injunction which has been granted in favour of the petitioners herein. In such circumstances, further delaying the matter at the instance of the petitioners would not at all be justified. Apart from that, the learned counsel appearing for the petitioners has claimed that the recitals in the title documents disclose that a common septic tank was reserved for all the parties. As such, I find that there is no jurisdictional error committed by the learned Judge while dismissing the application filed by the petitioners. The

petitioners if so advised are at liberty to challenge the impugned order in case any adverse order is passed against the petitioners while disposing of the appeal on merits. The petition stands accordingly rejected. All contentions of both the parties are left open.

F. M. REIS, J.

at*