

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 378 OF 2017

IN

WRIT PETITION NO. 174 OF 2017

SHRI. SANVLO SHAMBU NAIK.,

... Applicant

Versus

SHRI. VISHWAS SADASSIVA NAIK AND
ANR.,

... Respondents

Mr. Nigel Da Costa Frias, Advocate for the applicant.
Mr. V. P. Thali, Advocate for the respondents.

Coram:- M. S. SONAK, J.

Date:- 26th April, 2017

P.C.

The applicant, by this Civil Application seeks for the following relief:-

"This Court may be pleased to modify its order dated 12.4.2017 to the extent that the applicant is permitted to use the katcha road as shown in the annexed plan in red as an access to his residential house in survey no.37/2 of village Sanvordem."

2. Mr. Thali, learned Counsel for the decree holders points out that relief applied for if granted, would run counter to the judgment and decree dated 30.4.2002, by which the applicant is restrained in any manner from interfering in the suit plot named plot of the decree holder in survey no.35/1 and more particularly

identified in paragraph 3 of the Written Statement and from cutting any trees and destroying any plantation in this plot.

3. Mr. Costa Frias, however, submits that the very same decree expressly permits the applicant the use of foot path towards southern boundary of this plot as identified at paragraph 18 of the Written statement and the Counter Claim. Mr. Costa Frias, submits that even upon this foot path, decree holder has placed obstructions or any case creates obstruction.

4. The operative part of the judgment and decree dated 30.4.2002 reads thus:-

"Suit is dismissed with no order as to costs.

The Counter claim of defendants 3 and 4 decreed with no order as to costs.

The plaintiff is restrained from interfering in any manner in the suit plot namely plot of these defendants in survey no.35/1, and more particularly identified in para 3 of the written statement and from cutting any trees or from destroying the plantation in this plot of these defendants except the use of footpath towards Southern boundary of this plot as identified in para 18 of written statement and counter claim.

Decree accordingly.

Pronounced."

5. From the aforesaid, it is quite clear that the applicant is entitled to use of foot path towards southern boundary of plot as

identified in paragraph 18 of the Written Statement and counter claim. Mr. Thali, learned Counsel for the decree holder makes a categorical statement that there are no obstructions placed in the use of this foot path and in any case no obstruction will ever be placed in use of foot path. This statement is accepted. In view of this statement, there is no question of any modification, particularly, if the modification as applied for to run counter to the decree as aforesaid.

6. Mr. Costa Frias, submits that in case there is any obstruction on the foot path as aforesaid, liberty may be granted to the applicant to apply. Liberty is expressly granted.

7. Application seeking modification is disposed of in aforesaid terms.

M. S. SONAK, J.