

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.689 of 2015**

1. Shri Prakash Balkrishna Naik
Prataprao Sardessai
(since deceased) represented
by his legal heirs)
- 1a. Jyoti Prakash Naik Prataprao
Sardessai,
widow of Prakash Balkrishna Naik
Prataprao Sardessai, major of age,
- 1b. Balkrishna Prakash Naik P.
Sardessai, aged 31 years,
- 1c. Vishvesh Prakash Naik P.
Sardessai, aged 29 years,
all residing at Naguesh Prasad,
Madda, Cortalim, Goa. .. Petitioners

Vs.

1. Shri Surendra Balkrishna
Naik Prataprao Sardessai,
Near Chowgule College,
Gogol, Margao, Goa.
2. Captain of Ports,
Office of Captain of Ports,
Panaji, Goa. .. Respondents.

Mr. V. Menezes, Advocate for the petitioner.

Mr. R. G. Ramani, Advocate for the respondent no.1.

Mr. P. Faldessai, Additional Government Advocate for the
respondent no.2.

CORAM :- C. V. BHADANG, J.

DATE:- 6th June, 2017

ORAL JUDGMENT :

Rule, made returnable forthwith. Shri Ramani, the

learned Counsel waives service for the first respondent and the learned Additional Government Advocate waives service for the second respondent. Heard finally by consent of the parties.

2. The brief facts are that the petitioner now deceased Prakash Naik, was the real brother of the first respondent. Both of them had jointly purchased 2040 square metres of land from out of Survey No.30/1 of village Cortalim. The first respondent filed Special Civil Suit No.45/1984 against now deceased Prakash Naik, for partition of the said property by metes and bounds. The learned Senior Civil Judge at Vasco-da-Gama, passed a preliminary decree in the suit on 10/12/1996, holding that the first respondent and now deceased Prakash, were entitled to half share in the said property. Subsequently, a final decree was passed on 14/09/2001. Indisputably, the final decree dated was unsuccessfully challenged by now deceased Prakash and the decree for partition, has attained finality. The first respondent/ decree holder has filed Execution Case No.2/2012/C for execution of the decree, which is pending before the Executing Court.

3. The dispute in the present petition pertains to remaining 3710 square metres of land from out of the land Survey No.30/1. The total area of land survey no.30/1 is 5750 sq mts. In the final decree passed in the suit, the learned Trial

Court had held that this remaining land admeasuring 3710 square metres was belonging to Captain of Ports. Incidentally, Captain of Ports was not a party defendant in the suit. Be that as it may, the first respondent/ decree holder approached the learned Deputy Collector purportedly under Section 61 of Goa Land Revenue Code (Code, for short) again for partition of the property by metes and bounds. Evidently, this was much prior to filing of the Execution Proceedings. On behalf of the petitioner, a preliminary objection was raised before the learned Deputy Collector about maintainability of the proceedings under Section 61 of the Code, in view of initiation and pendency of the Execution Proceedings, before the Civil Court. The learned Deputy Collector, by a judgment and order dated 28/09/2012, dismissed the preliminary objection and gave the following directions :

"I hereby order the Inspector of Survey & Land Records, City Survey, Vasco Da Gama, Goa to partition property admeasuring 5750.00 square mts into Plot 'A' admesuring an area 1116.00 sq. mts to be allotted to the respondent No.1, Plot 'B' admesuring an area 924.00 sq. mts to be allotted to the Applicant and the balance area admeasuring 3710.00 sq.mts is to be allotted and recorded in the name of the respondent no.2 i.e. Captain of Ports from Survey No.30/1 of Village Cortalim after property survey, on payment of prescribed survey fees and submit report along with Revised Survey Plan and Area adjustment statement for

confirmation.”

4. The petitioner is aggrieved by a part of the said order, recording the second respondent 'Captain of Ports', as the owner of the remaining land admeasuring 3710 square metres. The petitioner challenged the said order of the Deputy Collector before the learned Administrative Tribunal being Land Revenue Appeal No.36/2012, which has been dismissed on 10/10/2014, which brings the petitioner to this Court.

5. It is submitted by Shri Menezes, the learned Counsel for the petitioner that subsequent to passing of the final decree, the petitioner could obtain certain information/ documents from the Captain of Ports, which are the basis for challenging the part of the order recording the Captain of Ports as the owner of the remaining land. It is submitted that the Deputy Collector while considering the preliminary objection, could not have decided the petition under Section 61 of the Code finally. Secondly, it is submitted that if necessary, the Deputy Collector could have initiated proceedings under Section 14 of the Code. It is submitted that the impugned order is passed without any enquiry.

6. Shri Ramani, the learned Counsel for the first respondent states that basic dispute was between the petitioner

and the first respondent about the partition of 2040 square metres of land. It is submitted that the trial Court, in its final decree, has held that the remaining land admeasuring 3710 sq. mts. belongs to Captain of Ports.

7. On hearing the learned Counsel for the parties, it appears that it would be appropriate if the learned Deputy Collector reconsiders the application under Section 61 of the Code, including preliminary objection raised on behalf of the petitioner and decides it in accordance with law. This is because, it is not disputed that the impugned order was passed after hearing the preliminary objection and in such case, the main application could not have been decided. In such circumstances, the learned Counsel for the petitioner and first respondent submit that the matter may be sent back to the learned Deputy Collector only on the issue of remaining land admeasuring 3710 square metres. The learned Additional Government Advocate, on instructions from Ms. Pooja Naik, Marine Inspector, has no objection for the matter being remanded back to the learned Deputy Collector. In such circumstances and by consent of the parties, the following order is passed :

ORDER

- i) The petition is partly allowed.
- ii) The impugned orders dated 28/09/2012 and

10/10/2014 are hereby set aside.

iii) The application under Section 61 of the Code filed by the first respondent is sent back to the learned Deputy Collector for deciding it afresh, in accordance with law and after hearing the parties.

iv) It will also be open to the learned Deputy Collector to initiate proceedings under Section 14 of the Code, if found necessary and appropriate, in accordance with law.

v) The rival contentions of the parties are left open.

vi) It is made clear that the Execution Proceedings for partition of 2040 square metres of land, can proceed independently.

vii) The learned Deputy Collector shall decide the application as expeditiously as possible and preferably within a period of six month from the date of appearance of the parties.

viii) Parties to appear before the learned Deputy Collector on 20/06/2017 at 10.00 a.m.

ix) Rule is made absolute in the aforesaid terms. No order as to costs.

C. V. BHADANG, J.

SMA