

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 854 OF 2016**

Shri Rosario Mariano Fernandes
r/o H. No. 156, Mushdem Assolda,
Quepem-Goa.

..... Petitioner

V e r s u s

1. Shri Francisco X. Fernandes,
r/o H. No.148,
Mushneamordi, Assolda,
Quepem, Goa.
(Above all are Registered Addresses)

.... Respondent

Mr. Almeida Coutinho Cleofato Garrett, Advocate for the Petitioner.
Mr. Sagar Malkarnekar, Advocate for Respondent no.1.
Mr. D. Shirodkar, Addl. Government Advocate for Respondent
no.2.

Coram:- C. V. BHADANG, J.

Date:- 24th February, 2017.

ORAL JUDGMENT:

Rule returnable forthwith.

The learned counsel for the respondents waives service. Heard finally by
consent of the parties.

2. Heard Shri Countinho, the learned counsel for the petitioner, Mr. S.
Malkarnekar, the learned counsel for respondent no.1 and Mr. D. Shirodkar,
the learned Additional Government Advocate for respondent no.2.

3. It is contended, with reference to the report dated 1/7/2014 of the Range Forest Officer, Quepem-Goa that the mango tree which is directed to be cut is at a distance of 14.50 metres from the respondent's house. It is pointed out that as per the report the tree may fall during 'gusty winds'. The contention is that there is no likelihood of fall of the tree in the normal/ordinary circumstances. Reliance in this regard is placed on the decision of this Court in the case of **Santosh R. Prabhugaonkar Vs. State and others (Criminal writ petition no.82/2010)** decided on 15/11/2010, in order to submit that unless and until the tree is in a dangerous or ruinous condition and is likely to fall in ordinary circumstances, no order for cutting of the tree can be passed. It is submitted that the respondent no.2 may reconsider the application filed by the respondent no.1 and pass appropriate orders.

3. The learned counsel for the respondent no.1 has no objection for the same.

4. In such circumstances, the following order is passed:

Order:

(i) The petition is partly allowed. The impugned order is hereby set aside.

(ii) The application filed by the respondent no.1 is restored to the file of SDO, Quepem, who shall decide the same afresh after hearing the parties and in accordance with law.

(iii) Rival contentions of the parties are left open.

(iv) Rule is partly made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

ap/-