

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 731 2011****SHRI. ROHIDAS KRISHNA NAIK AND 17****ORS.,****... Petitioners****Versus****SHRI. SONU KESSU GAUDE AND ORS.,****... Respondents**

Mr. Anthony Joe D'Silva, Advocate for the Petitioners.

Mr. E. Usapkar, Advocate for Respondent no.1.

**Coram:- C. V. BHADANG, J.**

**Date:- 9th October 2017.**

Mr. Anthony Joe D' Silva, Advocate for the Petitioners.

Mr. E. Usapkar, Advocate for Respondent no.1.

P.C.:

On hearing the learned counsel for the parties I find that the petition can be disposed of on a short count.

2. The respondent no.1 had filed R.C.S No.23/97/C against the petitioners and others. The suit proceeded ex parte against the petitioners. Eventually the suit was decreed in the following terms on 23/1/2002 :

"The suit of the plaintiff is hereby decreed.  
The defendants are hereby directed to drive out the

saline water stored by them into the said paddy field or any part thereof and restore the same on its original nature and use.

The defendants, their agents, servants, relatives, representatives, administrators, labourers or any other person or persons claiming through or under them are hereby restrained from in any manner storing, collecting or allowing to store any saline water into the suit paddy field of the plaintiff or its any part thereof and from in any manner by any such acts depriving the plaintiff the possession, enjoyment and use of the suit paddy field or any part thereof."

3. The petitioners along with some other defendants filed C.M.A/2009/C for setting aside the ex parte decree. The learned trial court by an order dated 17/8/2010 dismissed the application. The petitioners unsuccessfully challenged the same before the Learned District Judge in Misc. Civil Appeal no.6/2011. That appeal was dismissed on 24/3/2011. Feeling aggrieved this petition is filed.

4. Mr. Silva, the learned counsel for the petitioners, on instructions, states that the petitioners have no grievance so far as the second part of the impugned order is concerned where the petitioners/defendant or anybody on their behalf are restrained from in any manner storing, collecting, stagnating, the saline water into the suit paddy field of the plaintiffs or in any part thereof. In so far as the first part where the petitioners/defendants were directed to flush out the saline water stored in said paddy field is concerned, it is contended that the water has already been flushed out and at present

there is no water which has accumulated in the suit filed. He further submits that the bandhs have also been repaired. He further submits that an application is made to the Government to repair the sluice gate. It is obvious that in view of the statement (which is not controverted on behalf of the respondent no.1), nothing survives in so far as the first part of the relief granted above.

5. On hearing the learned counsel for the parties and after going through the record I do not find that any case for interference is made out in the concurrent findings recorded by the first appellate court. Thus the impugned order refusing to set aside the ex parte decree is hereby confirmed. Subject to the statement made on behalf of the petitioners as recorded above, the petition is dismissed with no order as to costs.

**C. V. BHADANG, J.**

**Ap/**