

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1182 OF 2018

YELLAPPA BADIGAR., ... Petitioner

Versus

MARIA MONTEIRO AND 2 ORS., ... Respondents

Shri Ashwin D. Bhobe, Advocate for the petitioner.

Coram:- C. V. BHADANG, J.

Date:- 22nd December 2018

P.C.

Heard Shri Bhobe, the learned Counsel for the petitioner, for some time. Perused record.

2. The petitioner is third party/ obstructionst, who filed an application dated 08/04/2013 before the Executing Court in Regular Execution Application No.45/2010/C between the Decree Holder Mrs. Maria Monteiro and Judgment Debtor Eslinda D'Silva. A perusal of the said application shows that all that the petitioner alleged was that on 08/04/2013, he was dispossessed by the bailiff of the Court with the assistance of the police, in spite of the fact that the bailiff was informed that the school and college examination of the children of the petitioner were underway. The petitioner further claims that certain articles as set out in para 2 of the application were damaged. The

petitioner by the said application prayed for necessary enquiry being conducted and the petitioner being put in possession of the suit house forthwith and for a direction to pay damages to the extent of Rs.2,86,000/- and for holding an enquiry against the bailiff for unlawfully and forcibly evicting the petitioner along with his family members from the suit house.

3. The Executing Court, by the impugned order dated 15/01/2016, has dismissed the said application, which was stated to be an application under Order XXI, Rule 99 of CPC. That order has been confirmed in appeal by the learned District Judge in Miscellaneous Civil Appeal No.7/2016 on 04/05/2018.

4. On hearing the learned Counsel for the petitioner and having gone through the impugned order passed by the Executing Court and that of the Appellate Court, I do not find that any case for interference is made out. Admittedly, the petitioner has lost possession in the year 2013. The application filed by the petitioner does not state as to in what capacity, the petitioner was in possession of the suit house and on what terms. During the course of the hearing of the application, it transpired that the petitioner was claiming as a licensee of one Mr. Thomas Anthony D'Souza, who had allegedly purchased the suit house from Captain Fedrick Anthony Noronha. The Appellate Court has found that Captain Fedrick Anthony Noronha had no right,

title and interest in the suit house as co-owner and he was not in possession of the suit house at any time. Thus, I do not find that any exception can be taken to the impugned order, dismissing the application. The petition is without any merit, and is accordingly dismissed.

C. V. BHADANG, J.

SMA