

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.163 of 2017**

John F. Pereira .. Petitioner

Vs.

Dhaku Madkaikar and
2 Ors. .. Respondents.

Shri Rohit Bras De Sa, Advocate for the petitioner.

Shri G. Agni, Shri E. Usapkar and Shri T. Gawas, Advocates for the
respondent nos.1 and 2.

None for the respondent no.3.

CORAM :- C. V. BHADANG, J.

Date : 31st August, 2018

ORAL ORDER :

Heard Shri De Sa, the learned Counsel for the petitioner and Shri Agni, the learned Counsel for the respondent nos.1 and 2. None for the respondent no.3, though served. Perused record.

2. The petitioner had approached the Collector purportedly under Section 113 read with Section 114 of the Goa Land Revenue Code (the Code, for short), for a declaration that the old cadastral Survey No.90 corresponds to Survey No.54/2 of village Carambolim and to demarcate the boundaries of the said survey number. The learned Collector, by an order dated

19/07/2010, dismissed the application, which was challenged by the petitioner before the Administrative Tribunal in Land Revenue Appeal No.61/2010, which has been dismissed on 21/09/2016. That is how the petitioner is before this Court.

3. Shri De Sa, the learned Counsel for the petitioner submitted that the application under Section 113/ 114 of the Code could not have been rejected on the ground that there is a decree of the Civil Court in favour of the petitioner, declaring the petitioner to be the owner of the land Survey No.54/2. It is submitted that the cadastral Survey No.90 is a larger property, of which Survey No.54/2 is a part. It is submitted that the Collector ought to have obtained enquiry report from the DSLR before proceeding to consider the application on merits. The learned Counsel has also pointed out to a reply dated 20/11/2009 to the application dated 03/11/2009, filed by the petitioner for issuance of "correspondence certificate", of old Cadastral Survey No.90 and new Survey No.54/2 of village Carambolim. It is pointed out that the Superintendent, Survey and Land Records has informed that the record pertaining to the old cadastral of Survey No.90 of village Carambolim is torn and is in mutilated condition and, therefore, the office of the Superintendent, Survey and Land Records was not in a position to issue Correspondence Certificate.

The learned Counsel has pointed out that the old cadastral Survey No.90 has been purchased by the grandfather of the petitioner on 04/10/1929. On behalf of the petitioner, reliance is placed on the decision of this Court in the case of ***Dr. Gerson Ferreira Vs. Dr. Inacio Cruz dos M. Paes***; (1995)4 Bom CR 11.

4. On the contrary, it is submitted by Shri Agni, the learned Counsel for the respondent nos.1 and 2 that the respondent no.1 has purchased the property bearing Survey No.54/3 from the respondent no.2 under a registered Sale Deed of the year 2006. It is submitted that the application dated 03/11/2009 was made with respect to the land Survey No.54/3. It is pointed out that in the application filed by the petitioner under Section 113/114 of the Code before the Collector, there is no reference to Survey No.54/3. It is submitted that even in the Sale Deed, under which the petitioner claims that his grandfather had purchased the land way back in the year 1929, there is no reference to the cadastral Survey number or the area purchased. It is pointed out that in so far as Survey No.54/2 is concerned, the petitioner has a decree of Civil Court in his favour, declaring him to be the owner.

5. I have carefully considered the circumstances and the

submissions made.

6. A perusal of the record shows that in the year 2009, the petitioner had applied to the Superintendent, Survey and Land Records for issuance of Correspondence Certificate in respect of old cadastral Survey No.90 with new Survey No.54/3 of village Carambolim village. However, in the application filed before the Collector, as has been rightly pointed out by the learned Counsel for the respondent nos.1 and 2, there is no reference in so far as the Survey no.54/3 is concerned. All along, the petitioner proceeded with a case for the demarcation of land Survey No.54/2. Even in the application, in para 4, the applicant claims that the applicant had realised that Survey No.54/2 of Carambolim village does not correspond with Survey No.90 of old cadastral survey. Shri De Sa, the learned Counsel for the petitioner submitted that there is an error so far as mention of survey No.54/2 is concerned in the application filed before the Collector. I am afraid, the contention cannot be accepted at this distance of time. Nowhere during the pendency of the application before the Collector or before the Administrative Tribunal, it was claimed that there is an error in so far as the mention of the land Survey No.54/2 in the application is concerned. Even in the present petition, there is no whisper that there was any such error. The Courts below have

refused to entertain the application, *inter alia*, on the ground that in so far as the land Survey No.54/2 is concerned, the petitioner has already a decree of the competent Civil Court in his favour, which is passed on 29/03/2008 in Civil Suit No.3/2007, declaring the petitioner as the owner in possession of the land Survey No.54/2. The judgment in the case of **Dr. Gerson Pereira** (supra) turned on its own fact. Considering the overall circumstances, I do not find that the concurrent finding of the Courts below suffers from any infirmity, so as to require interference in the exercise of supervisory jurisdiction of this Court. The petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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