IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1138 OF 2018

PRAKASH BALKRISHAN NAIK PRATAPRAO SARDESSAI (DEC) REP. BY HIS LRS., ... Petitioner

Versus

SURENDRA BALKRISHNA NAIK PRATAPRAO SARDESSAI AND ANR., ... Respondents

Shri Balkrishna Prakash Sardessai, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 30th November 2018

ORAL ORDER:

Heard Shri Sardessai, the learned Counsel for the petitioner for some time.

2. Admittedly, the Commissioner was appointed by consent of parties. The commissioner gave his report dated 21.12.2017, which has been accepted by the learned Executing Court, by the impugned order dated 17.11.2018. In this case, the record shows that after the preliminary decree was passed, final decree proceedings were taken and plan 1, as suggested by the Commissioner, then appointed, namely, the Executive Engineer, PWD, was accepted. As per the said plan, the petitioner/ judgment debtor was supposed to deposit Rs.96,000/- towards cost of 96 square metres, which the judgment debtors got in excess from the decree holders/plaintiffs. The petitioner has

deposited the said amount. Thus, there is absolutely no dispute insofar as the final decree proceedings are concerned.

3. The learned Trial Court has now accepted the report of the Commissioner, who was appointed by consent of parties on 18.11.2017, which order is subject matter of challenge in this petition.

4. Shri Sardessai, the learned Counsel for the petitioner has raised three contentions. Firstly, that the Commissioner was related to the decree holders and no notice of the proceedings, which were undertaken by the Commissioner was ever issued. Secondly, the Commissioner has not looked into the aspect of the easementary rights and lastly, it is contended that the petitioner is not liable to pay the costs.

5. None of the contentions raised, in my considered view, can be accepted. The record does not show that the ground that the Commissioner has not looked into the aspect of easementary rights, has been raised either before the Executing Court or before this Court in this petition. Thus, this ground cannot be looked into for the first time before this Court. Insofar as the ground of no notice of the commission being issued to the judgment debtors and the Commissioner being related to the decree holders, are concerned, it is too late in the day to raise this

issue, particularly because, the petitioner has contended before the Executing Court that the decree was already executed. The Commissioner was also appointed by consent of parties. The only aspect which was remaining was about the removal of the steel structure, which according to the petitioner, has been complied with. In that view of the matter, no case for interference is made out. The petition is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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