

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIOIN NO.347 OF 2018

- 1 Shri Narayan Waingankar,
Age 44 years,
Son of Gurunath Waingankar,
Residing at H.No.33/17,
Behind Village Panchayat office,
Maruti Nagar, Mollem,
Dharbandora – Goa.
 - 2 Mr. Gurunath Waingankar,
Age 74 years,
Son of Pundalik Waingankar,
Residing at H.No.33/17,
Behind Village Panchayat office,
Maruti Nagar, Mollem,
Dharbandora – Goa.
 - 3 Mr. Gayatri Waingankar,
(Deceased represented by her legal heirs
Petitioner Nos.1,2,4 and 5)
 - 4 Mr. Santosh Waingankar,
Age 45 years,
r/o. H.No.144, Bazarwado,
Collem, Sanguem Goa
Petitioner Nos. 2 and 4 through their
Attorney the petitioner No.1.
 - 5 Mrs. Santosh Waingankar,
Age 40 years,
r/o. H.No.144, Bazarwado,
Collem, Sanguem, Goa.
- ... Petitioners.

V/s.

- 1 Archdiocese of Goa & Daman,
Pacopatrinal Religious institution
Represented by its Genernal Power of
Attorney Holder Rev. Fr. Valeriano Vaz,
Son of Santan Vaz, major of age, Roman
Catholic Priest, Presently residing at

Patriarchal Palace, Altinho, Panaji,
Tiswadi Goa.

- 2 Mrs. Laxmi N. Waingankar,
Age 30 years,
Residing at Shree Anant Niwas,
Near Kamat Garage,
Gauri Radio,
Dhavorlim Housing Board,
Margao – Goa. ... Respondent.

Shri Ashwin D. Bhole, Advocate for the petitioners.

Shri J.E. Coelho Pereira, Senior Advocate with Ms. Kajol Mangueshkar, Advocate for the respondents.

Coram:- NUTAN D. SARDESSAI,J.

Reserved on : 28th March, 2019

Pronounced on : 3rd April 2019

JUDGMENT:

Heard Shri Ashwin D. Bhole, learned Advocate for the petitioners and Shri J.E. Coelho Pereira, learned Senior Advocate for the respondents.

2. Rule.

3. Ms. Kajol Mangueshkar, learned Advocate waives service of notice on behalf of the respondents.

4. The petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India questioning the order dated 29/01/2018 passed by the Civil Judge Junior Division,

Sanguem whereby the learned Trial Judge was pleased to dismiss the application filed by the petitioners under Section 47CPC in the execution proceedings filed against them. The petitioners are the original Judgment Debtors while the respondent No.1 the Decree holder in the said proceedings.

5. Heard Shri A.D. Bhobe, learned Advocate for the petitioners who conceded at the outset that there was a decree passed by the Trial Court dated 30/11/2011 pursuant to which the suit for permanent and mandatory injunction filed by the the respondent No.1 was decreed against them. They had preferred a Regular Appeal against the said judgment and decree before the District Court which came to be dismissed and the Second Appeal filed before this Court by them challenging the judgment and decree of the District Court also came to be dismissed pursuant to the order of this Court dated 21/07/2015 in the Second Appeal No.9 of 2015. The respondent No.1 had filed the execution proceedings for execution of the decree in their favour which was resisted by them by filing an application under Section 47 CPC in which they had taken objection to the authority of the constituted attorney to represent the respondent No.1 and also on the premise that the title of the decree holder the respondent No.1 was itself under a cloud and there were proceedings pending before the Collector under Section 14(3) of the Land Revenue Code.

6. It was his further contention that the respondent No.1 decree holder has objected to the said application and as being malafide and initiated with an ulterior motive to delay the proceedings and pressed for its dismissal. In any event the proceedings under Section 14(3) of the Land Revenue Code had no bearing on the execution proceedings and pressed for the dismissal of the application. The learned Executing Court on considering the arguments had even considered the aspect as to whether the respondent No.1 decree holder was entitled to execute the decree. This Court in the Second Appeal No. 09/2015 had recorded the submissions on their behalf that there was a serious doubt on the title of the respondent No.1 but had ultimately held at paragraph 19 that it could not be said in the facts circumstances that there was any cloud on the title of the respondent No.1 requiring them to file a suit for declaration of title and dismissed the appeal. It was his submission that the execution proceedings were required to be stayed pending such determination and that an enquiry was necessary to be held. He placed reliance in **Bhavan Vaja and others v/s. Solanki Hanuji Khodaji Masang and another** [AIR 1972 SC 1371] in support of his case.

6. Shri J.E. Coelho Pereira, learned Senior Advocate on behalf of the respondent No.1 adverted to the application filed by the petitioners under Section 47 CPC before the Executing Court

and submitted that they were seeking a stay to the executing proceedings. The learned Executing Court had duly addressed itself to the issue raised on behalf of the petitioners on the locus standi of the respondent No.1 and clearly come to a finding that the execution proceedings were filed by a duly authorised person. The second objection was also dealt with qua the title of the respondent No.1 to the suit property and clearly came to a finding that the so called proceedings before the Deputy Conservator of Forests and the respondent No.1 was of no consequence to the case of the petitioners to stay the execution proceedings. He also adverted to the findings rendered by this Court in the Second appeal No.9 of 2015 and pressed for the dismissal of the petition.

7. i have heard Shri Bhobe, learned Advocate for the petitioners and Shri J.E. Coelho Pereira, learned Senior Advocate for the respondent No.1 and besides considered the judgment in **Bhavan Vaja**(supra). Besides i have also adverted to the records relied upon on behalf of the petitioners to substantiate their case.

8. Admittedly the petitioners have suffered a decree of the Civil Court which was tested in appeal before the District Court and there was finality to the said judgment upon the dismissal of the Second Appeal No.9 of 2015 by the judgment of this Court dated 02/07/2015 wherein a learned Single Judge of this Court observed

on considering the contentions on behalf of the parties that the issue of title would not be directly and substantially in issue between the parties and that in a case of the type before it, the prayer for injunction would have to be decided with reference to the findings on possession. The learned Judge for that matter had clearly observed at paragraph 19 of the judgment that the findings recorded by the learned District Judge would not survive while allowing the withdrawal of the First Appeal No.140 of 2008 nor these findings would come in way of the respondent No.1. Besides, the learned Judge had observed that the respondent had a document dating back to the year 1934 as against the petitioners who were claiming adverse possession against the Government. It was also noted that both the Courts had concurrently found that the respondents were in possession of the suit property and in the circumstances there could not be any cloud on its title requiring them to file a suit for a declaration of title and in that view of the matter had dismissed the appeal after framing substantial question of law for determination.

8. In **Bhavan Vaja**(supra), the Hon'ble Apex Court held at paragraph 19 as under :

“It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases,

it ought to take into consideration the pleadings as well as the proceedings leading upto the decree. In order to find out the meaning of the words employed in a decree the court, often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the execution court and if that court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it."

9. This judgment does not in any manner advance the case of Shri Bhobe, learned Advocate for the petitioners to assail the findings rendered by the learned Executing Court and to call for an interference in exercise of the supervisory jurisdiction of this Court. The learned Executing Court had appropriately addressed itself to the question of the locus standi of the Constituted Attorney of the respondent No.1 to present its interest. The other objection raised on behalf of the petitioners that there was a dispute pending between the Forest Department and the decree holder and that the proceedings were pending under Section 14(3) of the Land Revenue Code cannot assist the petitioners to ask for a stay of the proceedings when all the Courts have concurrently held on the possession of the respondent No.1 in respect of the suit property. No case whatsoever is made out for an interference with the order under challenge. In view thereof I pass the following :

ORDER

Rule is discharged.

2. Writ Petition is dismissed with no order as to costs.

NUTAN D. SARDESSAI, J.

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