

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 352 OF 2019

RAMAKANT LADU GAONKAR., ... Petitioner

Versus

PREMANAND GOVIND GAONKAR AND ANR., ... Respondents

Mr. Ashwin D. Bhobe with Ms. Kalpa Govekar, Advocates for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 3rd July 2019

ORAL ORDER:

Heard Mr. Bhobe, the learned Counsel for the petitioner. The contesting respondent no. 1 is served. However, none appears.

2. The challenge in this petition is to the order dated 25.03.2019 (below Exhibit-48), by which, the learned Trial Court has appointed a Civil Engineer as a Court Commissioner to visit the suit property, to make inspection and to report whether, the approved plan and other permission/license/NOC, relied upon by the petitioner/defendant along with their application (Exhibit-59), pertain to the suit structure.

3. The only contention raised on behalf of the petitioner is that by virtue of the impugned order, the learned Trial Court has

practically delegated its jurisdiction to decide the application for modification of the order of injunction, filed by the petitioner to the Commissioner. The learned Counsel submits that this would be evident from the fact that the learned Trial Court has referred the pleadings of both the parties and the plans/maps available in the record to the Commissioner.

4. The contention, in my considered view, cannot be accepted. The record shows that earlier, an order of injunction, restraining the petitioner from carrying out any construction was passed on 23.02.2018. The petitioner has subsequently applied for license/permission and has applied for modification of the order on 06.10.2018. The respondent disputed that the license/permission, which the petitioner claims to have obtained now, pertains to the suit structure. In such circumstances, the respondent filed an application Exhibit-48 to appoint a Commissioner to verify the fact. In this context, the learned Trial Court has directed a Chief Engineer to be appointed as a Commissioner, to visit the suit structure, to inspect and make a report as to whether, the approved plan and other license/permissions/NOC, on which, reliance is placed by the petitioner, pertain to the structure, which is the subject matter of suit property or not. For this purpose, the Commissioner can refer to the pleadings of both the parties and the plans/maps available on record. The contention that the jurisdiction to decide the

application for modification has been delegated, cannot be accepted, as the Commissioner would only be filing his report, which will be subject to the acceptance of the Court. Needless to mention that it would be open to either parties to object to the report of the Commissioner, if so advised. Subject to this, no case for interference is made out. The petition is dismissed, with no order as to costs.

5. At this stage, Mr. Bhobe, the learned Counsel for the petitioner states that the application for modification of the order of injunction dated 23.02.2018, is pending, on account of which, the construction of the petitioner has been stalled. He, therefore, submits that the application dated 06.10.2018 may be expedited. In such circumstances, the Trial Court shall decide the application dated 06.10.2018, as expeditiously as possible and preferably within a period of three months from the receipt hereof.

C. V. BHADANG, J.

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