

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 461 OF 2019

SHRIHARI BHAVANI RAMANI AND ANR., ... Petitioners

Versus

RAJAN BHAVANI RAMANI AND 3 ORS., ... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.

Mr. Ajit R. Kantak, Advocate for the Respondents no.1 & 2.

Coram:- C. V. BHADANG, J.

Date:- 12th July 2019

P.C.:

The challenge in this petition is to Order dated 16.4.2019 passed below Exh.D-40 by the Learned Trial Court in Special Suit no.17/2014/A. By the impugned Order, the Learned Trial Court has dismissed an application at Exh.D-40 filed by the petitioners (the defendants no.1 and 2) for drawing a preliminary decree on admission.

2. The brief facts are that the respondents no.1 and 2 have filed the aforesaid suit against the petitioners and the respondents no.3 and 4 in respect of a plot of land admeasuring 1500 sq. mts. bearing Survey no.19/1-B situated at Penha-De-France. It is undisputed that the plaintiffs together with the defendants no.1 and 2 and the defendants no.3 and 4 have 1/3rd share each in the

suit plot. The case made out by the plaintiffs is that the said plot is affected by a statutory setback which is required to be maintained from the centre of the National Highway which is abutting the suit plot.

3. In such circumstances the plaintiffs sought a decree in the following terms.

a) For a Judgment and Decree directing the Suit Plot to be auctioned amongst all the three sets of co-owners viz. the plaintiffs, the defendants no.1 and 2 and the defendants no.3 and 4.

b) In the alternative for a Judgment and Decree requiring the defendants no.1 and 2 to take towards their share, the 1/3rd portion of the Plot closer/near to the National Highway Panaji to Mapusa.

c) For costs.

4. The petitioners and the respondents no.3 and 4 have filed their written statement and the trial in the suit has commenced.

5. It is at this stage that the petitioners have filed an application (Exh.D-40) for drawing a preliminary decree. Although specifically the application does not mention the provision under which it is filed the prayer has to be considered in the context of Order XX Rule 18 of CPC.

6. The Learned Trial Court has dismissed the application on the ground that the plot cannot be partitioned in as much as the same is affected by the setback.

7. I have heard Mr. A. Bhobe, the Learned Counsel for the petitioner and Mr. A. Kantak for the respondents no.1 and 2. Perused records.

8. It is not in dispute that the plaintiffs no.1 and 2 on one hand along with the defendants no.1 and 2 of one part and the defendants no.3 and 4 of the other, have 1/3rd share each in the suit plot. However, the manner in which the prayer clause is worded, does not envisage a decree to be passed on admission.

9. In my considered view, while passing a decree on admission the Court would not be entitled to modify the Prayer Clause and then pass a preliminary decree on admission. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.