

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 946 OF 2018

ANTHONY @ ANTONIO SEQUIRA., ... Petitioner

Versus

DAMIAO PASCOAL FERNANDES AND 11
ORS., ... Respondents

Mr. Gajendra Usgaonkar, Advocate for the Petitioner.
Mr. Sarvadnya Patil, Advocate for the Respondent Nos. 1 & 2.

Coram:- C. V. BHADANG, J.

Date:- 11th February 2019

ORAL ORDER:

Heard Mr. Usgaonkar, the learned Counsel for the petitioner and Mr. Patil, the learned Counsel for the contesting respondent nos. 1 and 2. The respondent nos. 3 to 11 are the predecessors-in-title, both of the petitioner, as well as the respondent nos. 1 and 2. Both, the petitioner and the respondent nos. 1 and 2 are claiming to be the mundkars in respect of two separate houses, standing in the property belonging to the respondent nos. 3 to 11. The record discloses that the petitioner as well as the respondent nos. 1 and 2 have purchased separate portions of land from the respondent nos. 3 to 11, under two sale deeds.

2. The respondent nos. 1 and 2 approached the learned Mamlatdar for declaration as a mundcar in respect of the dwelling house. That application was filed against the

respondent nos. 3 to 11 and obviously, the petitioner was not a party to the said application.

3. The learned Mamlatdar by an order dated 29.05.2017, has granted the declaration in favour of the respondent nos. 1 and 2. The petitioner feeling aggrieved by the said order has approached this Court in the present petition.

4. It transpired during the course of the arguments at Bar that the petitioner has filed an application for leave to appeal against the said order dated 29.05.2017 and that application is pending before the learned Deputy Collector at Mapusa. Although, that application is still pending, the petitioner has approached this Court on the ground that the order passed by the learned Mamlatdar is without jurisdiction.

5. Mr. Usgaonkar, the learned Counsel for the petitioner submitted that once, the respondent nos. 1 and 2 have purchased the portion of the land from the respondent nos. 3 to 11, it was not open to them to claim mundcarial rights and for the learned Mamlatdar to have granted the same. It is submitted that the respondent nos. 1 and 2, on the strength of the order dated 29.05.2017 may approach the Mamlatdar, claiming purchase of 300 square metres of land as the land is falling within the limits of a Village Panchayat. This according to the petitioner would

adversely affect the interest of the petitioner as the respondent nos. 1 and 2 have encroached on certain portion of access road, Cul-de-Sac in respect of which, the petitioner has filed a suit, which is pending. Mr. Usgaonkar, the learned Counsel for the petitioner submitted that in the face of the order passed by the learned Mamlatdar, the Civil Court would not be in position to decide the controversy in view of the declaration granted by the learned Mamlatdar.

6. I am afraid the contention cannot be accepted. If the claim of the petitioner is that the respondent nos. 1 and 2 have encroached on access road, Cul-de-Sac, the said act of the respondent nos. 1 and 2, would not be relatable to the order granting declaration. In any event, the application filed by the petitioner, seeking leave to challenge the impugned order is pending before the Deputy Collector. Needless to mention that the learned Deputy Collector shall decide the said application on its own merits and in accordance with law. Thus, having regard to the fact that the application is pending before the learned Deputy Collector, I decline to entertain the petition. The petition is dismissed, with no order as to costs.

C. V. BHADANG, J.