

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.483 OF 2019

Sanvlo Shambu Naik ... Petitioner

Versus

Vishwas Sadassiva Naik & anr. ... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.
Mr. V. P. Thali, Advocate for the Respondents.

Coram :- C. V. BHADANG, J.

Date :- 29th July, 2019.

ORAL ORDER

The challenge in this petition is to the order dated 12.04.2019 (below exhibit-92), passed by the Executing Court in Regular Execution Application No.1/2006. By the impugned order, an application, exhibit-92, filed by the respondents-decree holders for arrest and detention of the petitioner-judgment debtor under Section 51 read with Order XXI Rule 30 of the Civil Procedure Code (CPC, for short), has been partly allowed. The petitioner has been directed to furnish the list of his properties to be attached.

2. The petitioner had filed Regular Civil Suit No.13/1989 against the respondents for permanent and mandatory injunction in which the respondents had raised a counter

claim. The learned Trial Court by a judgment and decree dated 30.04.2002 dismissed the suit while decreeing the counter claim and the petitioner has been restrained from interfering in any manner with the suit plot survey no.35/1 of Village Sonverdem (more particularly described in para 3 of the written statement cum counter claim) and from cutting any trees or from destroying any plantation in the suit plot, except for the use of the footpath towards southern boundary of the same as identified in para 18 of the written statement cum counter claim.

3. The aforesaid Execution Application is filed by the respondents on the ground that there is interference with the suit plot inasmuch as the respondents are using it as an access and for parking their vehicles.

4. Writ Petition No.174/2017 was filed by the petitioner challenging an order dated 18.01.2017 directing his detention in civil prison. It appears that in the said petition, the petitioner filed an undertaking and the said petition was disposed off by this Court on 05.12.2017 in the following terms :

“i) The petition is allowed.

ii) The impugned order is hereby set aside. This

will be subject to the undertaking Exh.X, as submitted by the petitioner.

iii) The petitioner shall produce a copy of the undertaking before the Executing Court and shall abide by the said undertaking.

iv) Needless to mention that if there is any obstruction or non-compliance with the decree in favour of the respondents by a third party, it will be open to the respondents to take appropriate steps as may be permissible in law before the Executing Court.

v) In the circumstances, there shall be no order as to costs"

5. It may be mentioned that the respondents are also alleging the breach of the aforesaid undertaking by the petitioner.

6. The petitioner claimed before the Executing Court that there is no breach of the undertaking nor any vehicles are being parked in the suit plot bearing survey no.35/1.

7. The Executing Court conducted inquiry in which the decree holder examined himself as Aw.1, while the petitioner examined himself as Rw.1, along with one Baburai Naik, Rw.2.

The Executing Court after considering the evidence on record, found that the petitioner is bound by the undertaking given to this Court and that the respondent-decree holders have established that the petitioner and his children are interfering with the suit plot and are using the suit access and are parking their vehicles in the suit plot and have violated the undertaking given to this Court. However, the Executing Court has found that the arrest and detention of the petitioner "directly will not serve the purpose." In that view of the matter, the petitioner has been directed to furnish the list of properties to be attached.

8. I have heard Mr. Nigel da Costa Frias, the learned Counsel for the petitioner and Mr. V. P. Thali, the learned Counsel for the respondents. Perused record.

9. Mr. Costa Frias, the learned Counsel for the petitioner, has submitted that there is no violation of the undertaking or the Decree as passed against the petitioner and the Trial Court was in error in directing the petitioner to furnish the list of assets. It is submitted that the footpath which has been conceded in favour of the petitioner towards the southern boundary of the suit plot has been obstructed and, therefore, the petitioner is unable to use the same.

10. Mr. Thali, the learned Counsel for the respondents, has supported the impugned order. It is submitted that inspite of a specific undertaking given before this Court, the petitioner is using the suit plot and also parking his vehicles on the suit plot which is in breach of the Decree as well as the undertaking given to this Court. He submitted that the Executing Court after threadbare consideration of the evidence on record, has rightly directed the petitioner to furnish his list of assets.

11. I have considered the submissions made and I do not find that any case for interference is made out. The Executing Court on consideration of the oral evidence and particularly that of Rw.1 and Rw.2 has rightly found that there is a breach of the judgment and decree dated 30.04.2002 passed against the petitioner by which he has been restrained from interfering in any manner with the suit plot and parking vehicles in the suit plot. The finding of fact so recorded upon appreciation of evidence is not amenable to challenge in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The contention that the footpath conceded in favour of the petitioner towards the southern side of the suit plot is obstructed, cannot be accepted as rightly found by the Executing Court. The petitioner has not taken any action

against the respondent for blocking the said footpath.

12. I have carefully gone through the impugned order and it does not suffer from any infirmity so as to require interference. The petition is without merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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