

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 1061 OF 2018**

1. Shri Shivprasad B. Kakodkar, aged 63 years, married, Sole Proprietor, M/s S.B. Kakodkar & Co., Sapana Chambers, A.D. Costa Road, Margao, Goa - 403 601.
2. Shri Surendra S. Naik, aged 76 years, married,
3. Smt. Usha S. Naik, aged 69 years, housewife,  
Both residents of California, U.S.A.,  
Represented by their Attorney, Mr. Mahendra Kakule, aged 58 years, Caculo House, Near Post Office, Aquem, Alto Margao, Goa - 403 601. .... Petitioners

Versus

Smt. Alka S. Nayak, aged 62 years,  
Resident of B-5, Sai Dhan, Behind St. Sebastian Church, Aquem Alto, Margao, Goa 403 601. .... Respondent

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Mr. R.G. Ramani, Advocate for the Petitioners.

Mr. Jagannath J. Mulgaonkar, Advocate for the Respondent.

**CORAM : C.V. BHADANG, J.**

**DATE : 24<sup>th</sup> January, 2019**

**ORAL JUDGMENT:**

Rule made returnable forthwith. Mr. Mulgaonkar, the learned Counsel for the respondent, waives service. Heard finally by consent of parties.

2. This petition can be disposed of on a short count. The petitioners, who are the judgment debtors are challenging the order dated 11.10.2018, passed by the Executing Court, thereby directing execution of the sale deed, in favour of the decree holder.

3. Order XXI Rule 34 of CPC provides for decree for execution or for endorsement of negotiable instrument etc. in terms of provisions of Order XXI, Rule 34 of CPC. The Executing Court upon obtaining the draft of the document from the decree holder, is required to serve the said draft on the judgment debtor, together with a notice, requiring his objections, if any, within such time as the Court fixes in this behalf. In a case where the judgment debtor objects to the draft, the Executing Court has to decide the objection and then pass appropriate orders, approving or altering the draft as it thinks fit.

4. Admittedly, the procedure contemplated under Order XXI, Rule 34 of CPC has not been followed by the Executing Court in this case. The dispute between the parties appears to be pertaining to only approximately 36 square metres of land. Mr. Ramani, the learned Counsel for the petitioners states that

the petitioners are ready and willing to execute the sale deed, if it is in respect of 216 square metres of undivided property as held by the learned Arbitrator.

5. Be that as it may, considering the fact that there is non compliance of Order XXI, Rule 34 of CPC, the impugned order cannot be sustained. In such circumstances, the following order is passed:

### **ORDER**

- (i) The petition is partly allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The matter is remitted back to the Executing Court.
- (iv) The learned Executing Court shall serve the draft of sale deed on the petitioners, if not already served.
- (v) The petitioners will be at liberty to file objections, if any, to the draft, by 15.02.2019.
- (vi) The Executing Court shall then proceed to decide the objection in accordance with law, after hearing the parties, as expeditiously as possible.
- (vii) Rival contentions of the parties are left open.
- (viii) Rule is made absolute in the aforesaid terms, with no order as to costs.

**C. V. BHADANG, J.**