IN THE HIGH COURT OF BOMBAY AT GOA.

MISCELLANEOUS CIVIL APPLICATION NO. 852 OF 2019

IN

FIRST APPEAL NO. 99 OF 2001.

Jose Alexio J. S. Bosco
Velho(Dec) Rep. Thr.
Lrs. Thro His POA
by applicant no.2 and anr. ……. Applicants.

Versus

Maria Violante Celina Sushila de
Viera Velho(dec) Thr. Lrs. And 3 ors. …….. Respondents.

Shri Saresh Lotlikar, Senior Counsel with Shri Chaitanya Padgaonkar, Advocate for the applicants.
Shri Nigel Costa Frias, Advocate for the respondent nos.1 and 1(a).

Coram:- DAMA SESHADRI NAIDU, J.
Date: 16th October 2020.

PC.

Three sisters and one brother owned a piece of property, having purchased it from their father. It seems, in the revenue records, the father continued to be shown as the owner. Over time, the Government acquired that piece of property and passed an award of compensation. It was in 1994.

2. The owner wanted a reference to the Civil Court and, on reference, the Civil Court enhanced the compensation in 2010. Then, the aggrieved the Government appealed to this Court. By then, the father died; so children, who in fact were the owners under a registered sale deed, filed a cross-appeal. This Court, eventually, dismissed the Government's appeal and allowed the owners' cross-appeal; it enhanced the compensation once again.

3. When the Government filed the appeal, it deposited the award amount, as enhanced by the Reference Court.

4. Of the three sisters, one sister died. So her legal representatives have been brought on record. Thus, two sisters and the legal representatives of the third sister applied to this Court and withdrew 75% of the amount the Government deposited. 25%, ostensibly, the brother's share remained unclaimed. In 2016, the brother, one of the co-owners, died. Later, his wife, that is the applicant, applied to this Court to withdraw the balance 25%. Then, the remaining parties objected to it. It was on the premise that when the Land Acquisition Officer passed the award, the brother, acting as the father's GPA, withdrew over ₹12,83,600/- and appropriated it for himself. Therefore, they contended that from the amount due to the applicant, the amount her husband had earlier taken must be deducted.

5. Instead of entertaining that controversy, this Court noted that the appeal already stood disposed of, and in the cross-appeal, it already enhanced the compensation. In the light of that development, the parties have already laid execution to recover the enhanced amount. So, this Court declined to adjudicate the dispute about the actual amount the applicants are entitled to in a disposed of appeal. Instead, it has left the issue open and required the parties to agitate their rights or claims in the execution proceedings. The Court passed that order on 29.7.2019.

6. Now the applicants have come up with this MCA, seeking these reliefs:

> a. *This Hon'ble Court be pleased to recall the order dated 29.7.2019 and consequently permit the Applicants to withdraw the remaining balance of the amounts deposited before this Hon'ble Court in First Appeal No. 99 of 2012.*
>
> b. *In the alternate if this Court comes to the conclusion that the respective shares of the parties ought to be ascertained by the Executing Court then the Respondents be directed to deposit the entire amounts withdrawn by them in view of the order*

> *dated 30.03.2012 along with the accrued interest before the Ld. Executing Court in 166/2014 pending before the Ld. District Judge-I at Panaji."*

7. Heard Shri Saresh Lotlikar, the learned Senior Counsel for the applicants, and Shri Nigel Costa Frias, the learned Counsel for the respondent nos.1 & 1(a).

8. The learned Senior Counsel has strenuously contended that the respondents themselves have gone on record admitting the share of applicant's husband. In the face of that admission, this Court ought not to have entertained the respondents' objections. At any rate, the amount due to the applicants remains with the Court. Therefore, according to the learned Senior Counsel, this Court ought to have allowed the applicants to withdraw the balance 25% of the award amount.

9. On the other hand, Shri Nigel Costa Frias, the learned Counsel for the respondent nos.1 and 1(a), has submitted that though the applicants have sought the reliefs in the name of recall of the order, it is, in fact, a review of an interlocutory order in a disposed of appeal. Therefore, he asserts that the application is misconceived. He further submits that if the order is erroneous, the applicants have other efficacious remedies. At any rate, he has submitted that the Execution Proceedings are still pending and, in terms of Section 47 of CPC, all parties can agitate their rights and claims in those proceedings.

10. At the outset, I clarify that I do not intend to enter into the merits of the consideration. The fact remains that this Court passed an order. That order does not suffer from any error apparent on the face of the record, nor has this Court has committed any manifest error for me to correct it. If the order is erroneous, the applicants have their remedies.

11. Besides, as the matter of equity, the respondents contend that the first applicant's husband withdrew a substantial amount at the earliest

and that should be accounted for before she could withdraw her share. True, there is no dispute about the applicants' share; the dispute is only about its adjustment.

At any rate, I reckon this Court has left it open for the parties to agitate their claims and counterclaims in the Execution Proceedings. And I reckon such a direction prejudices none, including the applicants. So I dismiss the MCA.

DAMA SESHADRI NAIDU, J.

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