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IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 1 OF 2022

IN

SECOND APPEAL NO. 23 OF 2017

FATIMA ALMEIDA AND 5 ORS. ... PETITIONERS

VS

LUIS SANTANA RODRIGUES & 8 ORS. ... RESPONDENTS

Mr. M.B. Costa, Senior Advocate with Ms. Karishma Betquecar, Advocate for the Petitioners.

Mr. Ashwin D. Bhobe with Ms. Annelise Fernandes, Advocates for the Respondents.

CORAM: G.S. KULKARNI, J.

DATED: 8 SEPTEMBER 2022

ORAL ORDER.

1. Heard Mr. Costa, learned Senior Counsel for the petitioners and Mr. Bhobe, learned Counsel for the respondents.

2. The contempt as alleged is of an order dated 30.03.2017 passed by this Court and more particularly of paragraph 3 of such order, which reads thus:

“The impugned judgment is stayed insofar as the relief no. 1 is concerned. However, insofar as the relief no. 2 is concerned, the appellant would be entitled to access the road on the east without

encroaching in the disputed Chalta No. 55 of the respondent/original plaintiff."

3. It is also necessary to note the relevant extract of the order dated 09.08.2016 passed by the learned District Judge, South Goa on the Appeal (Regular Civil Appeal No. 155/2014) which reads thus:

"A perusal of the plan annexed to the Inventory Proceedings, at Exh. 40, brings out that the plot 'E' was on the southern side of the plot B2 and there was a 6 metres wide road separating the two plots and that the plot 'E' was the southern-eastern corner plot of the property "Velem Kandalem". The fact that there was a compound wall of laterite stones constructed around the plot 'E', brings out that the rubble stone wall, beyond the compound wall on the eastern side of plot 'E', was the rubble stone wall of the plaintiffs. This evidence also suggests that the compound wall was owned by the plaintiffs and not by the defendants."

4. The grievance of the petitioner is in regard to relief no. 1 granted by this Court by order dated 30.03.2017 passed in Second Appeal No. 23 of 2017. The contempt alleged as averred in paragraph 5 of the memo of the Petition reads thus:

"Now, taking advantage of the covid lockdown in the month of April 2021, the appellants/respondents herein have constructed a flower bed with laterite stones about 1 metre wide partly on the dispute Chalta no. 55 of the present complainants and partly on the road of the sub division bearing chalta no. 8 of PTS 30 in clear breach and contempt of the order of this Hon'ble Court dated 30th March 2017 in MCA and decree of

the District Court. Annexed hereto and marked as Exhibit A–colly are true copies of the judgment and decree of the District Court and the order dated 30th March 2017 passed by this Hon'ble Court.”

5. After having heard the learned Counsel for some time, Mr. Bhobe makes a statement that the respondents will remove the plants and the flower beds and restore status quo ante within a period of 15 days from today. The statement made by Mr. Bhobe on behalf of the respondents is accepted. Such course of action is also acceptable to Mr. Costa, learned Senior Counsel for the petitioners.

6. In view of the fair stand taken by the respondents, the contempt ought not to proceed further.

7. Disposed of. No costs.

G.S. KULKARNI, J.

VAIGANKAR
ESHA SAINATH

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