

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.503 OF 2022

ANANT R. SAWAIKER AND ANR.PETITIONERS

Versus

SUDHA TUKARAM SHIRODKAR
AND 36 ORS.RESPONDENTS

Mr A.D. Bhobe, Advocate for the Petitioners.

CORAM: M. S. SONAK, J.

DATE : 15th JULY 2023

ORAL ORDER :

- 1.** Heard Mr Bhobe for the petitioners.
- 2.** The petitioners/original plaintiffs in the suit challenge order dated 10.02.2022 made by the Trial Court dismissing petitioners' application at Exhibit 60 for framing of an additional issue.
- 3.** The record shows that an amendment was allowed and the petitioners were permitted to allege that the alleged illegal construction of a retaining wall and/or cement concrete wall extended to the southern boundary of Survey No.84/3-A of Village Queula in addition to property surveyed under no.83/2 and 83/3.

4. Based upon the unamended plaint, the Trial Court had framed, *inter alia*, the following issue :

1. Whether the plaintiffs prove that the defendant nos.1 to 32 through defendant no.33 have commenced the work of construction of the retaining wall on the southern side of the property under survey no.83/2, 83/3 by violating the terms of the conversion report issued by TCP Department and the license granted by the Village Panchayat by encroaching in the nallah of Village Queula by 2 to 4 mtrs and reduced the width of the nallah to 2 mts. from maximum of 6 mts.?

5. Since there was no reference to property surveyed under no.84/3-A, application under Section 60 was made for framing an additional issue.

6. The Trial Court has now dismissed this application by pointing out that issue no.1, as framed above, covered the issue now sought to be raised by the petitioner.

7. Since the Trial Court has clarified the above position, it is obvious that issue no.1 would not be restricted only to the allegations concerning the retaining wall on the southern side of the property surveyed under no.83/2 and 83/3, but would also include reference to survey no.84/3-A.

8. With the above clarification, there is no necessity to entertain this petition.

9. Accordingly, this petition is disposed of with the above clarification. There shall be no order for costs.

M. S. SONAK, J.

NITI K
HALDANKAR

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