

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 125 OF 2023
WITH
CIVIL APPLICATION NO. 25 OF 2023

Anand Ganpat Parab & 7 Ors. ... Petitioners
Versus
Laxman Parab (Dec.) Thr. His legal heirs & 9 ... Respondents
Ors.

Ms. Luiza Marcela Rego, Advocate with Mr. S. Mesta,
Advocate for the Petitioners.

Mr. Abhay Nachinolcar, Advocate with Mr. H. Vaze,
Advocate for the Respondents.

CORAM: M. S. KARNIK, J
DATED: 30th JUNE 2023

ORAL ORDER

1. Heard learned counsel for the petitioners and the learned counsel for the respondents.

2. The challenge to this petition is to an order dated 26.06.2018 passed by the trial Court below exhibit B-1. An application was filed by the plaintiff-decree holder for execution of decree under Order XXI of Civil Procedure Code (CPC). By the impugned order, the petitioners-judgment debtors are directed to remove encroachment to the extent of 3.37 square metres as identified on plan/sketch at exhibit 82 collectively in green colour and restore the land to its original condition within 20 days.

3. The decree holder had filed a suit for mandatory and permanent injunction which came to be decreed. The decree was challenged in appeal before the First Appellate Court. The said First Appeal was filed by one of the defendants (present petitioner no.6) which was dismissed by the First Appellate Court. Second Appeal no. 126/2017 filed by the present petitioner no. 6 in this court, was dismissed by an order dated 22.06.2018.

4. I have gone through the order passed by the Executing Court. Learned Counsel for the petitioner raised the very same grounds of challenge which were raised before the executing court. It is submitted that one of the respondent Laxman Parab had expired much prior to the passing of the decree and, therefore, the decree is a nullity. The executing court has observed that the legal heirs of late Laxman Parab were brought on record during the pendency of the suit. The same being a matter of record, the said contention is therefore without any substance.

5. It is then urged that the defendant no.5 had expired before passing of the decree and no steps were taken to bring the legal heirs on record. It is submitted that the judgment debtor no. 5(a) was made a party without any order of the court. The executing court has observed that the judgment debtor no. 5(a) was not the only sole heir but even defendant no.7 being husband was already on record. It is

pertinent to note that in the Second Appeal which was dismissed by this court, one of the substantial question of law framed was whether the suit had abated in the absence of the legal heir of the defendant no.5 in the suit having not been brought on record after her death. This court in answer to the substantial question of law, has observed thus :

“..... In so far as the substantial question of law at (b) is concerned, the appellant being the husband of the original defendant no. 5 and as her legal representative was already there on record. Thus, it is not possible to accept that the suit had abated.”

6. The submission therefore is without any substance.
7. Moreover I find that the impugned order was challenged by way of an appeal before the learned Principal District Judge. The learned Principal District Judge held that such appeal against an order in the course of execution to be not maintainable. Nonetheless, learned Principal District Judge has taken pains to consider the contentions raised by the petitioners on merits. He found no substance in the contentions so raised.
8. I find that this writ petition is only an attempt to delay the execution.
9. The petition is rejected.

10. Civil application, if any, stands disposed of.

M. S. KARNIK, J