

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 346 OF 2023

1. Shri Shrikant Sazro Kurtikar, Son of Sazro Kurtikar, 64 years of age, r/o H. No. 340, Kelbai, Curti, Ponda-Goa.
2. Mrs. Savita @ Mortul Shrikant Kurtikar, Wife of Shrikant Sazro Kurtikar, 58 years of age, r/o H. No. ... Petitioners 340, Kelbai, Curti, Ponda-Goa.

Versus

1. Smt. Devalem Hari Gaude @ Saraswati Hari Gaude, Wife of late Hari Gaude, Major of age, r/o H. No. 341, Kelbai, Curti, Ponda-Goa.
2. Shri Dilip Hari Kurtikar, Son of late Hari Gaude, Major of age, r/o H. No. 341, Kelbai, Curti, Ponda-Goa.
3. Mrs. Dipika Dilip Kurtikar, Wife of Shri Dilip Hari Kurtikar, Major of age, r/o H. No. 341, Kelbai, Curti, Ponda-Goa.
4. Shri Sandeep Hari Kurtikar, Son of late Hari Gaude, Major of age, r/o H. No. 341, Kelbai, Curti, Ponda-Goa.
5. Mrs. Gayatri Sandeep Kurtikar, Wife of Shri Sandeep Hari Kurtikar, Major of age, r/o H. No. 341, Kelbai, Curti, Ponda-Goa.

6. Shri Pradeep Hari Kurtikar, Son of late Hari Gaude, Major of age, r/o H. No. 341, Kelbai, Curti, Ponda-Goa.
7. Shri Nishikant Shrikant Kurtikar, Son of Shri Shrikant Sazro Gaude, Major of age, r/o Kelbai, Curti, Ponda-Goa.
8. Miss Sneha Shrikant Kurtikar, Daughter of Shri Shrikant Sazro Kurtikar, Major of age, r/o Kelbai, Curti, Ponda-Goa.
9. Smt. Durgabai Shrikant Sinai Kundaikar, Wife of late Shrikant Vithal Sinai Kundaikar, Major of age, r/o H. No. 8, U.N. Road, Baina, Vasco-da-Gama, Goa.
10. Shri Subray Raghunath Joshi, Son of late Raghunath Joshi, Major of age, r/o D-17, First Floor, Kundaikar Nagar, Near Dada Vaidya Road, Panaji-Goa.
11. Shri Raghunath Subray Joshi, Son of Subray Raghunath J Joshi, Major of age, r/o D-17, First Floor, Kundaikar Nagar, Near Dada Vaidya Road, Panaji-Goa.
12. Smt. Sunita Raghuraj Tamba, Daughter of late Yeshwant Sinai Kundaikar, Major of age, Residing at Parimal Bungalow, Near Nirmala Institute, Altinho, Panaji-Goa.
13. Shri Raghurai Rama Tamba, Son of late Rama Tamba, Major of age, r/o at Parimal Bungalow, near Nirmala

Institute, Altinho, Panaji-Goa.

14. Shri Laxmikant Santba Sinai Kundaikar, Son of late Santba Sinai Kundaikar, Major of age, r/o Girija Bungalow, near Navjeevan Hospital, Damodar Nagar, Curti, Ponda-Goa.
15. Smt. Sima Laxmikant Sinai Kundaikar, Wife of Laxmikant Sinai Kundaikar, Major of age, r/o Girija Bungalow, Near Navjeevan Hospital, Damodar Nagar, Curti, Ponda-Goa.
16. Smt. Kunda Vijaykumar Sinai Kundaikar, Major of age, r/o Girija Bungalow, Near Navjeevan Hospital, Damodar Nagar, Curti, Ponda-Goa.
17. Shri Shivaram Rajaram Sinai Kundaikar, Son of late Rajaram Sinai Kundaikar, Major of age, R/o D-6, Kundaikar Nagar, Dr. dada Vaidya Road, Panaji-Goa.
18. Smt. Sagunabai Shivram Kundaikar, Son of late Rajaram Sinai Kundaikar, Major of age, R/o D-6, Kundaikar Nagar, Dr. dada Vaidya Road, Panaji-Goa.
19. Shri Arvind Rajaram Sinai Kundaikar, Son of late Rajaram Sinai Kundaikar, Major of age, R/o D-6, Kundaikar Nagar, Dr. dada Vaidya Road, Panaji-Goa.
20. Smt. Nita Arvind Sinai Kundaikar, wife of Shri Arvind Rajaram Sinai Kundaikar, Son of late Rajaram Sinai

Kundaikar, Major of age, R/o D-6,
Kundaikar Nagar, Dr. dada Vaidya
Road, Panaji-Goa.

21. Shri Jivaji Rajaram Sinai Kundaikar,
Son of Rajaram Sinai Kundaikar,
Major of age, R/o D-6, Kundaikar
Nagar, Dr. dada Vaidya Road, Panaji-
Goa.
22. Smt. Mohini Jivaji Sinai Kundaikar,
Wife of Jivaji Rajaram Sinai
Kundaikar, Major of age, R/o D-6,
Kundaikar Nagar, Dr. Dada Vaidya
Road, Panaji-Goa.
23. Shri Ganpat Rajaram Sinai
Kundaikar, Son of late Rajaram Sinai
Kundaikar, Major of age, R/o D-6,
Kundaikar Nagar, Dr. dada Vaidya
Road, Panaji- Goa.
24. Smt. Sweta Ganapat Sinai Kundaikar,
Wife of Ganpat Rajaram Sinai
Kundaikar, Major of age, R/o D-6,
Kundaikar Nagar, Dr. dada Vaidya
Road, Panaji-Goa.
25. Smt. Indira Puruxotama Sinai
Kundaikar, Widow of Puruxotoma
Sinai Kundaikar, Major of age, r/o A-
5, Kundaikar Nagar, Dr. Dada Vaidya
Road, Panaji-Goa.
26. Smt. Laxmi @ Laxmibai Shantaram
Sinai Kundaikar, Wife of Shantaram
Sinai Kundaikar, Major of age, r/o A-
5, Kundaikar Nagar, Dr. Dada Vaidya
Road, Panaji-Goa.

27. Shri Shantaram Puruxotoma Sinai Kundaikar, Son of late Puruxotoma Sinai Kundaikar, Major of age, r/o A-5, Kundaikar Nagar, Dr. dada Vaidya Road, Panaji-Goa.
28. Shri Raghuvir Balkrishna Sinai Kundaikar, Son of Balkrishna Sinai Kundaikar, Major of age, r/o Shantal Bungalow, Mangor Hill, Near Primary School, Vasco-da-Gama, Goa.
29. Shri Raghuvir Balkrishna Sinai Kundaikar, Son of Balkrishna Sinai Kundaikar, Major of age, r/o Shantal Bungalow, Mangor Hill, Near Primary School, Vasco-da-Gama, Goa.
30. Shri Shantikumar Balkrishna Sinai Kundaikar, Son of Balkrishna Sinai Kundaikar, Major of age, r/o M-2, Kundaikar Nagar, Dr. dada Vaidya Road, Panaji-Goa.
31. Shri Vishnu Balkrishna Sinai Kundaikar, Son of Balkrishna Sinai Kundaikar, Major of age, r/o M-2, Kundaikar Nagar, Dr. Dada Vaidya Road, Panaji-Goa.
32. Kum. Vasanti Balkrishna Sinai Kundaikar, Daughter of Balkrishna Sinai Kundaikar, Major of age, r/o M-2, Kundaikar Nagar, Dr. Dada Vaidya Road, Panaji-Goa.
33. Shri Guirish Vishwambhar Sinai Kundaikar, Son of late Vishwamber Rane, Major of age, r/o Kundaikar Nagar, near Mahalaxmi Temple,

Panaji-Goa.

34. Smt. Mandakini Guirish Sinai Kundaikar, Daughter of Vishwamber Rane, Major of age, r/o Kundaikar Nagar, Near Mahalaxmi Temple, Panaji-Goa.
35. Smt. Umabai Vishamber Sinai Kundaikar, Widow of Vishwamber Sinai Kundaikar, Daughter of late Yeshwant Jivaji Kerkar, Major of age, r/o Kundaikar Nagar, Near Mahalaxmi Temple, Panaji-Goa. ...Respondents

Mr. A.D. Bhobe with Ms. S. Shaikh, Advocates for the Petitioners.

Mr. Jatin Ramaiya, Advocate for the Respondents.

CORAM: BHARAT P. DESHPANDE, J.

DATE: 30th November, 2023

ORAL JUDGMENT:

1. Rule. Rule is returnable forthwith.
2. Heard finally at the stage of admission with the consent of the learned Counsel for the parties.
3. Short issue involved in the present petition is the order passed by the learned Civil Court below Exh.56 in Regular Civil Suit No.16 of 2016 on 04/05/2023 thereby allowing the said application and

permitting the plaintiffs to rely upon the correct plan of the Surveyor subject to payment of costs of Rs.5000/-.

4. Mr. Bhobe, learned Counsel for the petitioners submits that a suit is filed for declaration and injunction as well as recovery of possession on the ground that the petitioners/defendants encroached upon the suit plan. He further submits that respondents/plaintiffs examined themselves and produced a plan prepared by the Surveyor Mr. Sanjay Naik. Such a plan was marked 'X' for identification during evidence of the plaintiffs. Subsequently the Surveyor Mr. Sanjay Naik stepped into the witness box as Pw3. During his examination-in-chief the survey plan prepared by Pw3 was marked as Exh.55. This witness was cross-examined by the petitioners/defendants. After completion of the said cross-examination and on the subsequent date, the respondents/plaintiffs herein filed an application for production of correct plan showing encroachment in the suit plan. Such application was resisted by the petitioners/defendants by filing a reply. However, the learned trial Court by the impugned order allowed the said application by imposing costs which is under challenge.

5. Mr. Bhobe would submit that the attempt on the part of the plaintiff is to replace the plan already exhibited at Exh.55 with a fresh plan and to done away with the cross-examination of Pw3 wherein the witness was exposed. He submits that such procedure cannot be allowed as the same is going to prejudice the defendants.

6. Mr. Ramaiya appearing for the respondents submits that the application is only for production of additional documents i.e. the original plan prepared by the Surveyor. He submits that by affidavit of the plaintiffs as well as that of the Surveyor, it has been explained that the plan placed on record was only a draft whereas the finalised plan remained in the office of the Surveyor. He submits that the defendants would get an opportunity to cross-examine the witness if such a plan is produced in evidence. He submits that the order passed by the trial Court is only for production of the documents subject to payment of costs and therefore the same need not be interfered at this stage.

7. Rival contentions fall for consideration.

8. Admittedly the plan at Exh.55 is duly signed by the witness/Pw3 and the same has been already exhibited in evidence. The entire cross-examination of Pw3 nowhere shows that it was a draft plan, which is now found in the affidavit which is filed subsequently along with the application for production of additional documents.

9. However, the fact remains that the application filed by the plaintiffs is for production of the correct plan which has been allowed by the trial Court subject to payment of costs. Such an order permitting the plaintiffs to rely upon the correct plan and producing it on record cannot be faulted with on the basis of an affidavit filed by the plaintiffs and the Surveyor along with the application. The production of the correct plan at this stage need not be interfered

with. However, it is made clear that producing such documents in evidence is entirely a separate stage. The petitioners/defendants are entitled to raise objections to such a plan as and when such corrected plan is produced in evidence either through the plaintiffs or through the Surveyor as the case may be.

10. The learned Trial Court will have to decide such objections of the defendants/petitioners in case the corrected plan is tendered in evidence at any subsequent stage. The impugned order is only permitting the plaintiffs to rely upon the correct plan by producing it on the record. By doing so the plaintiffs are permitted only to place the documents on record. The application dated 19/09/2022 is only for production of the correct plan prepared by Pw3 showing encroachment in the suit plan. Thus the order is only on production of such a plan on record. The defendants will be at liberty to raise objections at the time of production of such a plan in evidence. In view of the above observations, there is no need to interfere with the impugned order. However, it is made clear that the right of the defendants to raise objections with regard to such documents as and when tendered in evidence is kept open.

11. The petition stands disposed of in the above terms. Rule stands discharged.

BHARAT P. DESHPANDE, J.

MEENA
VISHAL BHOIR

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