

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO.42 OF 2019

IN

SECOND APPEAL NO.17 OF 2019

MINGUELINHO D'COSTA (DEC) THR. HIS

LRS. AND ANR.,

... APPLICANT

Versus

MICHAEL GRACIAN FERNANDES, REP. BY

POA, FRANCISCA FERNANDES AND 7

ORS.,

... RESPONDENT

Mr. Parikshit Sawant, Advocate for the Applicants.

Mr. R.G. Ramani, Senior Advocate with Mr. Pranav Shenvi
Kakodkar, Advocate for Respondent Nos. 1 and 2.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 14th December, 2023

P.C.

Heard Mr. Sawant for the Applicants and learned Senior Counsel Mr. Ramani who appears along with Mr. Kakodkar for Respondent Nos. 1 and 2.

2. Mr. Sawant submits that recently an order is passed by the Executing Court directing the Bailiff of the Court to execute the decree and to provide all assistance to the Decree Holders, thereby restraining the fencing caused on the suit access as shown in the plan, within a period of one month. He submits that the suit access is the disputed area which has been included in the sale transaction.

3. Mr. Sawant would submit that the Second Appeal is Admitted only on the issue as to whether the additional area of 59 square metres included in the purchase order, is beyond the area of 200 square metres. He submits that the Applicants being the owners, permitted to erect the fencing within the said 59 square metres. If the decree is executed, the rights of the Applicants will be affected. Since the Appeal is Admitted on the specific question of law with regard to 59 square metres of land, Mr. Sawant submits that the removal of such fencing would prejudice the Applicants.

4. The learned Senior Counsel would submit that the execution is filed with regard to the decree against Respondent Nos. 7 and 8, whereas the Applicants purchased the property subsequently. He submits that even if the fencing is removed as per the orders of the Executing Court, no prejudice is going to be caused. It is submitted that if the Applicants succeed in the Second Appeal, they would be entitled to place the fencing again.

5. Since the question before this Court in Second Appeal is regarding entitlement of the area of 59 square metres, as claimed in the report, the removal of the fencing and allowing the Mundkars to use the said area as access would certainly prejudice the Applicants.

6. Accordingly, the effect and operation of the impugned order dated

30.11.2023 passed in Regular Execution Application No. 19/2017 is hereby stayed till the disposal of the Second Appeal.

7. Civil Application No. 42 of 2019 accordingly stands disposed of.

BHARAT P. DESHPANDE, J.

VAIGANKAR
ESHA SAINATH

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