

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 519 OF 2023

1. Mr. Shaikh Kamalodin Muzawar,
son of Mr. Ibrahim Muzawar, 45 years
of age, Resident of H.No. 90
Queula, Kavlem, Ponda - Goa.

2. Mrs. Zohra Muzawar,
Wife of Shaikh Kamalodin Muzawar,
59 years of age, Resident of
H. No. 90, Queula, Kavlem,
Ponda - Goa.
Both represented by their duly
Constituted Power of Attorney
Shri Shaikh Aptabe Alam,
Major of age, Son of Shaikh Ali,
Resident of Muslimwada,
Bhoma, Ponda - Goa.
Constituted vide Power of Attorney
dated 17/10/2011 executed before
Notary Shrikant B. Parab At Ponda Goa
and registered in his office Under no. 2258/11
dated 17/10/2011

..... Petitioners

Versus

1. Mr. Shaikh Anwar Muzawar,
Major of age, s/o Mr. Shaikh Ibrahim
Muzawar, resident of Queula Kavlem,
Ponda Goa Presently residing at
2nd floor, Lima Residency,
Fatorda, Margao - Goa.

2. Mrs. Sigeta Muzawar Alias Shagufta
Muzawar, Major of age, Wife of
Mr. Shaikh Anwar Muzawar,
resident of Queula Kavlem,
Ponda, Goa, Presently residing at
2nd floor, Lima Residency, Fatorda,
Margao-Goa

3. Deputy Collector and Sub-Division
Officer, Ponda, Goa
[Amendment carried out as per order
dated 13.06.2022]

.....Respondents

Mr. S. Shaikh, Advocate for the Petitioner.

Mr. P. Kholkar, Advocate for Respondent No. 1 and 2.

Ms. Sulekha S. Kamat, Additional Government Advocate for
Respondent no. 3.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 29th November, 2023

ORAL JUDGMENT

1. Heard learned Counsel Ms. S. Shaikh for the Petitioner, Learned Counsel P. Kholkar for Respondent No. 1 and 2 and Learned Additional Government Advocate Ms. Sulekha Kamat for Respondent No. 3.

2. Rule. Rule is returnable forthwith. Matter is taken up for final disposal with consent at the admission stage itself.

3. Present petition is filed challenging the order passed by the Executing Court dated 04.09.2021.

4. By this order the learned Executing Court rejected the objections raised by the Petitioner to the report of ISLR and the partition carried out by the Dy. Collector of the suit plot as per the decree dated 23.12.2016.

5. The learned Counsel for the Petitioner, Ms. S. Shaikh would submit that firstly the inspection was carried out in absence of the Petitioner. Similarly, she claimed that the area measured by ISLR is not existing at the site. Thirdly she claimed that only the land has been divided but not the suit house.

6. Learned Counsel Mr. Kholkar appearing for the Respondent no. 1 and 2 claimed that opportunities were given to the Petitioner to remain present at the time of inspection and even the date was fixed as per the convenience of the Petitioner. However, the Petitioner remained absent deliberately in order to delay the proceedings. He submits that the Petitioner never objected to the area of the suit plot which is admittedly 610 sq. mts. He further pointed out that after the division of the suit property, application for division of suit house by metes and bounds is still pending before the Executing Court.

7. The learned Additional Government Advocate pointed out that the proceedings before the Dy. Collector were conducted by adhering to the principles of Naturel Justice and even the date of inspection was fixed in presence of the parties and with their consent. Subsequently, Petitioner remained absent. However, an application for intimating his absence was handed over to the entry clerk of the office and not the concerned clerk dealing with the said proceedings. She then submitted that the report of ISLR was submitted in presence of both the parties and no objection was raised by either of the parties to

such division.

8. Rival contention fall for consideration.

9. The Civil Suit was filed in the year 2011 wherein a preliminary decree was passed in the year 2016. In the said preliminary decree the Court ordered that the Plaintiff No. 1 and 2 are declared as joint owners of one half share of the suit house and further directed for appointment of Commissioner to demarcate the suit property and the suit house equal halves.

10. The preliminary decree was then referred to the Office of Dy. Collector and SDO Ponda for the purpose of inspection of the land and dividing it equally. The said matter was registered as case No. PON/LRC/PART/63/2018/5133 in the Office of Dy. Collector and SDO Ponda. The proceeding sheets for the said case before the Dy. Collector show that the notices were issued to both the parties and ISLR was directed to inspect the suit property in presence of the parties. It further shows that the inspection was carried out for the purpose of partitioning the suit property and the date was intimated to both the parties. The Roznama dated 09.05.2019 clearly shows that the Petitioner remained present along with his advocate and noted the date of inspection which was fixed on 13.05.2019 at 10.30 a.m. There are signatures of the parties to that effect in the proceeding sheets. However, the Petitioner remained absent at the time of such inspection.

11. Learned Counsel for the Petitioner would submit that on 09.05.2019 itself an application was inwards in the Office of Dy. Collector stating that the Petitioner would not be available as he has gone out of station. On the earlier date also Petitioner remained absent which is clear from the order dated 04.07.2019 issued by the office of Dy. Collector and SDO Ponda. This itself shows that the Petitioner deliberately avoided to remain present at the time of inspection. Nothing prevented him from sending his representative or even his Advocate at the time of inspection of the suit plot by the ISLR.

12. Even otherwise, carrying out inspection by the ISLR was only to find out the measurement of the suit property and to divide it equally as directed by the decree. Thus no prejudice will be caused to the Petitioner by accepting the report of the ISLR by the Dy. Collector and even by the Executing Court.

13. The learned Trial Court while deciding the objections observed in the impugned order dated 04.09.2021 that no dispute was raised by the Petitioner at any point of time regarding the area of the suit plot. For the first time during execution such dispute is raised, which is apparent with an intention to delay the proceedings.

14. The Impugned order is a reasoned order and passed on the basis of demarcation carried out by the Dy. Collector. The plot has been divided into two equal portion. The decree speaks about division

of the plot into two equal halves.

15. Application for division of the suit house equally by metes and bound is still pending before the Executing Court. The Dy. Collector was only supposed to divide the plot whereas the Executing Court is now required to consider the division of the suit house in accordance with the decree. Thus Impugned order needs no interference.

16. Accordingly petition fails and the same stands dismissed. Rule stands discharged accordingly.

BHARAT P. DESHPANDE, J.