

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.424 OF 2021

NAMDEV LAXIMAN SAMANT AND ANR ... PETITIONERS
Versus
MAHABALESHWAR GOVIND SAMANT AND 14
ORS ... RESPONDENTS

Mr Salil S. Saudagar, Advocate for the Petitioners.

CORAM:- VALMIKI SA MENEZES, J.

DATED :- 11th January, 2024

ORAL ORDER:

The petitioners have taken exception to an order dated 28.09.2021 passed by the Civil Judge Junior Division at Pernemi in Civil Miscellaneous Application No.2 of 2019 filed in Regular Civil Suit No.3/2019. The impugned order appoints a Bailiff of the Court to inspect the suit property and take photographs of the suit structure after giving notice to both parties and to file a report of the inspection before the Court. The order appointing the Bailiff is passed pursuant to an application alleging that the petitioner has continued to construct in the suit property despite an order dated 19.01.2019 by which the trial Court has restrained the petitioners from putting up further structures in the suit property.

2. The impugned order is one passed to ascertain the extent of the

transgression of the Court's order of injunction and is not one which is passed to appoint a Commissioner under Order 26 Rule 9 to ascertain boundaries of a property or any encroachment. The impugned order, therefore, does not partake of an exercise of collecting of evidence on behalf of the Bailiff.

3. Considering this aspect, and the reasons given by the trial Court in the impugned order for appointing the Court Bailiff as an Officer to take photographs of the suit construction, I find no reason to interfere with the impugned order in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

4. Consequently, the Petition stands dismissed. No order as to costs.

5. Needless to say, the Petitioners are always at liberty to challenge the correctness of the report along with the photographs filed by the Bailiff by filing an appropriate application raising objections to the report. Obviously, the trial Court would then proceed to record the evidence of the Bailiff when the same is produced as evidence in the contempt application.

VALMIKI SA MENEZES, J.

MARIA SUZANA REBELLO

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