

vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.755 OF 2023

1. MRS. KALPANA BHONSLE, aged 50 years, married, resident of Block No. 3, near the Post Office, Sanguem, Goa.
2. MR. NARENDRA BHONSLE, aged 53 years, married, resident of Block No. 3, near the Post Office, Sanguem, Goa.Petitioners.

Versus

1. MR. SURESH B. KAKODKAR, major of age, married, resident of H. No. 658, Madhegal, Cacora, P. O. Curchorem, Quepem, Goa.
2. MRS. SUREKHA S. KAKODKAR, major of age, married, resident of H. No. 658, Madhegal, Cacora, P. O. Curchorem,Respondents. Quepem, Goa.

Mr Ryan Menezes, Advocate for the petitioners.
Mr Shirin Naik, Advocate for the respondents.

CORAM: BHARAT P. DESHPANDE, J

DATE: 28th February 2024

ORAL JUDGMENT.:

1. Rule.
2. Rule made returnable forthwith.
3. Heard parties by consent for final disposal.
4. Petitioner is challenging the impugned order dated 12.6.2023 passed in Execution Application No.2/2021/B wherein learned Executing Court rejected the objection of the petitioners/Judgment

debtors with regards to execution of a decree.

5. Mr Menezes, learned counsel appearing for the petitioners would submit that first of all plaint did not properly describes the suit property and the boundaries mentioned therein are only of larger property. He would therefore submit that judgment and decree passed by the Court cannot be executed for want of proper description of the suit property.

6. Mr Menezes, while placing reliance in case of

7. ***Bandhu Das and Anr Vs Uttam Charan Pattanaik***,¹ would submit that in absence of proper description, decree would be unexecutable.

8. Mr Menezes while placing reliance in ***Amabanna Vs Ghanteappa***,² would submit that when the description of the property is not properly pleaded in the plaint, the suit cannot be decreed and same cannot be executed.

9. Mr Menezes submits that execution application is filed by praying to hand over delivery of the suit property/suit plot are by vacating the dwelling house situated therein. Reply is filed on behalf of the petitioners to the Execution Proceedings and thereafter impugned order was passed.

10. Mr Menezes would submit that first of all when the suit property is not properly described, decree becomes unexecutable and

1 2006 SCC Online Or. 30

2 1999 SCC Online Kar 158

therefore objections ought to have been accepted.

11. Mr S. Naik appearing for the respondents would submit that plaint described suit property on the basis of the agreement of sale and paragraph 2 of the plaint discloses the suit plot having an area of 809 sq. mts which is part and parcel of the bigger property bearing survey no. 70/1 of village Shirvoi, Taluka Quepem. He submits that though Civil Court dismissed the suit, on appeal same was decreed. Second Appeal filed against such decree was rejected by this Court vide order dated 7.10.2022. Only thereafter execution application was taken up for the purpose of handing over the possession of the suit plot. He submit that grounds which are raised now are not incorporated in the reply filed by the petitioners/ Judgment debtors before the Executing Court.

12. Rival contentions fall for consideration.

13. The suit was filed in the year 2011 by the respondents plaintiff for specific performance of agreement of sale dated 14.5.2008. Suit property is described in the plaint stating that it contains an area of 809 sq. mts of bigger property bearing survey no. 70/1. Boundaries of the property has been described claiming that it is a suit plot and it is part of bigger property owned by one Shantabai Bhutto Shirvoikar.

14. After filing of the written statement issues were framed by Civil Court which are found in paragraph 13 of the judgment of the trial Court. There is no issue framed with regards to identification of the

suit property or suit plot.

15. After leading the entire evidence by both the parties, learned trial Court dismissed the suit along with counterclaim.

16. Respondents/plaintiffs filed Regular Civil Appeal No. 13/2018 before the District Court which came to be allowed vide judgment dated 30.3.2021. Points for determination framed by the First Appellate Court are found in paragraph no.16 wherein again it is necessary to note that there is no point framed with regards to identification of the suit plot. This clearly goes to show that petitioners/defendants never raised any dispute with regards to description of the suit plot or even the identification of the suit plot at loco.

17. Petitioners filed Second Appeal before this Court bearing Second Appeal No.410 of 2022 which was decided on 7.10.2022. In the said order no ground has been raised with regards to identification of the suit plot. Substantial questions of law which were proposed in the matter are found in paragraph no. 7. While deciding said appeal, this Court considered that there is no substantial question of law arising out of the fact and circumstances of the matter. Accordingly, Second Appeal was dismissed vide order dated 7.10.2022.

18. Respondents filed execution application in the year 2021 and in paragraph no.1(g) assistance of the Court was sought for the purpose

of delivering the property as mentioned in paragraph no.1.

19. Respondents filed reply to an application filed under Order 21 Rule 35 of CPC however, it is clear from the said reply that petitioners are clearly silent about any objection with regards to identification of the suit plot. For the first time while arguing orally before the learned Executing Court this objection was raised. In such circumstances, it is clear that right from the filing of the written statement till filing of the Second Appeal, petitioners never raised any objection with regards to identification of the suit plot.

20. Mr Naik, would submit that petitioners themselves while leading evidence before the trial Court produced various documents including Exh. 64 which is sketch plan showing the suit plot.

21. Thus it is clear that by producing such documents, petitioners/defendants identified the suit property as disclosed in paragraph no.1.

22. Decision in the case of ***Bandhu Das and another*** and ***Ambanna*** (supra) will not be helpful to the petitioners in the present matter for the simple reason that description of the suit plot is found in the plaint which is already incorporated in the judgment of the trial Court. Secondly, petitioners failed to raise such objection right from the time of filing of the written statement up to filing of the Second Appeal. Even such objections are not raised in the reply filed before the Executing Court. Only because some oral arguments

are advanced, petitioners cannot claim about absence of proper description of the suit property and that too when the matter came up for executing the decree. Impugned order therefore cannot be faulted with. Petition therefore deserves to be rejected. Rule stands discharged.

23. Accordingly, petition stands disposed of.

BHARAT P. DESHPANDE, J.