

WRIT PETITION NO. 546 OF 2003

Shri Vicente Coutinho,
s/o Pedro Coutinho,
aged 61 years, married,
r/o House No.97,
Anus Nuvem, Salcete, Goa. ... Petitioner.

Versus

Shri Rosario Figueiredo,
major in age, bachelor,
r/o Largo de Republica,
near Civil and Criminal Court,
Old Market, Margao. ... Respondent.

Shri S. S. Kakodkar, advocate for the petitioner.

Shri C. A. Coutinho, advocate for the respondent.

CORAM : A. M. KHANWILKAR, J.

DATE : 29th November, 2003.

ORAL ORDER

Heard both sides. I find no reason to interfere with the view taken by the Courts below. In my opinion, the executing Court has, inter alia, rightly found that in the present case the application for temporary injunction in respect of the self same suit structure, moved by the judgment-debtor/petitioner herein, in the mundkar case was dismissed by the Mamlatdar and which order was confirmed by the Collector. That position is not disputed even before this Court. If that is so, the question of stay of execution in respect of the self-same structure, does not arise. Learned counsel for the petitioner, however, placed reliance on the decisions reported in 1988(1) All India R.C.J. 400, **Shri Felicio Martins vs. M/s. Cosme Matias Menezes & Ors.**, 1989(1) GoaL.T. 175, **Baburao Vishnu Naik vs. Ramchandra**

Vishnu Naik & Anr. and 2001(1) GoaL.T. 3, Shri Subha Venkatesh Kamat vs. Shri Vasu Naik & Ors.

2. However, to my mind, in none of these cases the question that arises for consideration here was put in issue. Indeed in all these decisions, the view taken is that once the issue regarding mundkarial right is pending before the competent authority, no suit, including execution of decree in a suit passed by the civil Court, could proceed. However, in the present case as is observed by the executing Court, the petitioner/judgment-debtor, had filed an application before the competent authority for protection in respect of the extended portion, which is the subject-matter in the present execution proceedings and that relief was specifically rejected. That Order has become final as the same came to be confirmed by the Collector as far back as in October 2000. In that view of the matter, the question of stay of execution in respect of that premises will not arise.

3. Hence, no fault can be found with the executing Court in directing further steps to be taken in the execution proceedings in respect of the extended portion of the suit premises.

4. Learned counsel for the petitioner then contended that the petitioner has not been provided fair opportunity. According to him, the petitioner was entitled to

cross-examine the Commissioner. No such argument was canvassed before the Court below. In any case, the Court below has referred to the earlier Commissioner's report and there is nothing on record to even remotely suggest that the earlier report is to be discarded on any available or permissible grounds in law.

5. Hence no case for interference in exercise of writ jurisdiction is made out. Petition rejected.

A. M. KHANWILKAR, J.

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