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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 365 OF 2021

MORMUGAO PORT AUTHORITY

(formerly known as Mormugao Port Trust),

A body constituted under the

Major Port Authorities Act, 2021

Having its office at Headland,

Sada-Goa.

...Petitioner

Amendment
carried out as
per order dated
04.01.2024.

Versus

Smt. Lalita A. Kankonkar

House No. 16,

Near MPT Old Office,

Mormugao Harbour, Goa.

...Respondent

Mr. Yogesh Nadkarni with Mr. Nilay Naik and Ms. Simran Khadilkar, Advocates for the Petitioner.

Mr. Vledson Lucio Braganza with Mr. Ramchandra Phadte, Advocates for the Respondent.

CORAM

: VALMIKI MENEZES, J.

DATED

: 20TH FEBRUARY, 2025.

ORAL JUDGMENT:

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned counsel for the parties, the matter is finally heard and disposed of.

3. This petition takes exception to order dated 10.12.2018, dismissing an Execution Application filed by the Petitioners, who are the Decree Holders in Execution Application No. 21/2013, before the Civil Judge Senior Division at Vasco Da Gama.

4. The Civil Court had decreed Special Civil Suit No. 12/2008/C by Judgment and Decree dated 10.04.2013. The Decree attained finality for want of the Respondents filing any Appeal and was sought to be executed to seek the demolition of the house and the retaining wall in the suit property. In the impugned order, the suit property was originally described under Chalta No. 8 of P.T Sheet No.13 of the city survey of Vasco. In the evidence, it has come on record, as recorded in the findings of the Trial Court at paragraph No. 24, that the Land Survey Department vide its letter dated 22.09.2008 at Exhibit C-80 of the suit file, has shown land under old Chalta No. 8 (which was the original description of the suit property), to have been now allotted new Chalta No.4 of P.T. Sheet No. 8. The findings in the Judgment and the Decree in the suit, therefore, pertain to the suit property which, as noticed by the Court to be new Chalta No. 4 of P.T Sheet No. 8. The suit structure is described in paragraph No. 31 of the Judgment and Decree and consists of a new illegally constructed house

encroaching upon 45 sq. mtrs. within the original plinth area, and the retaining wall with the length of 10.60 mtrs.

5. The Executing Court appears to have proceeded on the basis that there was no structure shown in the survey plan of the land under Chalta No. 4 of P.T. Sheet No. 8 of city survey Vasco, when in fact that was precisely the case of the Petitioner/original Decree Holder before the Civil Court, that construction, in the nature of an illegal house structure admeasuring 45 sq. mtrs. and an illegal retaining wall of 10.60 mtrs was carried out by the Judgment Debtor in that very survey number. The executing court has obviously proceeded on an erroneous factual basis and has failed to exercise jurisdiction vested in under the Code of Civil Procedure.

6. An executing Court would have all the powers within the provisions of Section 51 CPC to determine all questions relating to and including identity of the structures which were the subject matter of the Decree. These powers can be exercised in various manners by the Executing Court including by appointing a Commissioner, inspecting the site, and determining which was the structure(s) to be demolished under the Decree. In the present matter, the Executing Court has failed to exercise jurisdiction vested in it under provisions of

Section 51 CPC, which has resulted in the passing of the impugned order.

7. The impugned order is therefore quashed and set aside and the matter is remanded back to the executing Court to follow the procedure laid down in Order 21 read with Section 51 CPC. The executing Court shall exercise such powers vested in it to identify the structures which are the subject matter of the Decree and proceed to execute the Decree in accordance with law.

8. The impugned order stands quashed and set aside with direction as mentioned above.

9. Rule is made absolute in the above terms. No order as to costs.

10. The parties to appear before the Executing Court on 11.03.2025.

VALMIKI MENEZES, J.