

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 105 OF 2013****with****CIVIL APPLICATION NO. 42/2013**

1. Smt. Caxi Sakharam Sirodcar
or Caxibai Sacarama Sirodcar,
(since deceased) LRs. already on record.

2. Mrs. Lakshmi Prabhakar Naik
alias Xeuntu daughter of
Sakharam Krishnanath Shiroadkar,
of full age, married,
housewife, and her husband,

3. Shri Prabhakar Pundalik Naik,
son of Pundalik Naik, of full age,
married, service, both residents of
Tintovaddo, Nerul.

4. Mrs. Neeta Rohidas Kalangutkar
alias Revathi, daughter of
Sakharam Krishnanath Shiroadkar,
of full age, married,
housewife, and her husband,

5. Rohidas Rajaram Kalangutkar,
son of Rajaram Kalangutkar,
of full age, married, businessman,
both residents of Assonora, Bardez, Goa.

6. Miss Rathan Sakharam Shiroadkar,
daughter of Sakharam
Krishnanath Shiroadkar, of full age,
married, housewife,
resident of Firguem Bhat, Nerul.

7. Shri Pandurang Sakharam Shiroadkar,
son of Sakharam Krishnanath Shiroadkar,

of full age, married, housewife,
resident of Firguem Bhat, Nerul.
Bardez, Goa.

8. Mrs. Rukmini Pandurang Shirodkar,
wife of Pandurang Sakharam
Shirodkar, of full age, married,
housewife, resident of
Firguem Bhat, Nerul, Bardez, Goa.

9. Shri Krishnanath Sakharam Shirodkar,
son of Sakharam Krishnanath Shirodkar,
of full age, unmarried,
resident of Firguem Bhat,
Nerul, Bardez, Goa.

10. Miss. Guita Sakharam Shirodkar,
daughter of Sakharam Krishnanath Shirodkar,
of full age, spinster,
resident of Firguem Bhat,
Nerul, Bardez, Goa.

Petitioner No.9 for self and duly constituted
attorney for petitioners No.1 to 8 and 10.

..... PETITIONERS.

V/s.

1. The President,
Comunidade of Nerul,
Nerul, Bardez, Goa.

2) Shri Dharma Devba Kalangutkar,
son of Devba Kalangutkar,
of full age, married, businessman,
resident of Tintowaddo, Nerul,
Bardez, Goa and his wife
(since deceased)

3) Mrs. Tulshi Dharma Kalangutkar,
wife of Dharma Devba Kalangutkar,
of full age, married, housewife,
resident of Wadi, Candolim,

Near Whispering Palm Hotel
(since deceased)

4) Shri Mansoor Hussain Khan,
of full age, married, businessman,
and his wife;

5) Mrs. Mansoor Hussain Khan,
wife of Mansoo Hussian Khan,
of full age, married,
c/o. Lucio Miranda,
Architect, Nizari Bhavan,
2nd Floor, Panaji, Goa.

6) Dr. vaz Anastasio Conceisao Adriano
de Souza and his wife;

7) Mrs. Fortunata Antonio Henriqueta
Fernandes de Souza.

8) Dr. Matias Adriano de Souza and
his wife;

9) Mrs. Angela do Rosario Goes Pinto
Rodrigues,

10) Mrs. Manuela Adriano de Souza
Rwezaura, and her husband

11) Benedict Mwestga Felician Rwezaura,

12) Mrs. Helena Adriana de Souza Cruz,
and her husband,

13) Jose Manuel Madeira Cruz,

14) Mrs. Gloria Serafina Adriano de Souza
(bingre do Amaral and her husband)

15) Jorge Filipe Martina Bingre do Amaral

All from nos. 6 to 15 are of Indian
Original hailing from Nerul, Bardez, Goa
represented through their Attorney
Miss Laura Sofia Pinto de Braganza e
Pereira, Opposite Indoor Stadium,
Campal, Miramar, Panaji, Goa.

16) Shri Marcoa Fernandes,
of full age, widower,
fisherman,
(since deceased through LRs. as
16 c, 17 & 18)

17) Mr. Jose Marcos Fernandes,
r/o. Maimo Vaddo, Nerul,
Bardez, Goa.

18) Shri Custodio Fernandes,
son of Marcos Fernandes
of full age, married,
fisherman, and his wife,

19) Mrs. Lourdina Fernandes,
of full age, married, housewife,
all residing at Maimem,
Nerul Bardez, Goa.

20) Mr. Bhagwant Bhobe,
r/o. Panaji, Goa.

..... RESPONDENTS.

Mr. Sebastiao Vales, Advocate for the petitioners.

Mr. J. P. Mulgaonkar, Advocate for the respondent No.20.

CORAM :- F.M. REIS. J.

Date : - 10 JULY 2015.

ORAL JUDGMENT :

Heard Mr. S. Vales, learned Counsel appearing for the petitioners and Mr. J.P. Mulgaonkar, learned Counsel appearing for the respondent No.20.

2. Rule. Heard forthwith, with the consent of the learned Counsel. Learned Counsel appearing for the respondent waives notice.

3. Upon hearing the learned Counsel appearing for the respective parties, a short point falls for consideration in the above writ petition is, whether the learned Judge has committed an error of jurisdiction whilst passing the impugned Order dated 23rd November, 2012, whereby an application filed by the petitioners to examine two witnesses, namely Jose Rodrigues, who is an official of the Comunidade to produce a Certificate of the Comunidade of Nerul dated 13/2/1996 marked "X" for identification in the deposition of PW.1 and Mr. Prazeres A. Gonsalves, who prepared the plan, marked "X", subject to proof, in the deposition of PW.1 came to be dismissed. It is the case of the petitioners that on account of

inadvertence on the part of the Counsel appearing for the petitioners that the concerned witnesses could not be examined before the evidence of the petitioners, who are plaintiffs in the suit, came to be closed. The learned Counsel has further pointed out that the learned Judge has erroneously refused the relief to the petitioners on the ground that the petitioners are not entitled to examine a defendant as a witness. The learned Counsel submits that except defendant No.19/respondent No.20 herein, none of the other respondents opposed the application to examine the witnesses. The learned Counsel, as such, submits that the impugned order deserves to be quashed and set aside.

4. On the other hand, Mr. J.P. Mulgaonkar, learned Counsel appearing for the respondent No.20 has supported the impugned order. The learned Counsel has pointed out that the petitioners are only delaying the matter by filing some frivolous applications when they are very well aware that the petitioners have failed to establish their case. The learned Counsel further points out that the evidence of the respondents has already started and the cross examination of DW.1 is at the initial stage. The learned Counsel, as such, submits that the petition be rejected.

5. I have carefully considered the submissions of the learned Counsel and I have gone through the record. The contention that the plaintiffs can examine a defendant as a witness is now well settled in the Judgment of this Court, reported in [2012 (1) Goa L.R. 1, in the case of *M/s. Ravalnath Builders vs. Mrs. Sebastiano Escolastica*. Taking note of the observations made therein, the ground on which the application was refused, cannot be sustained.

6. Be that as it may, no doubt there was some negligence on the part of the petitioners in not examining the concerned witnesses before the evidence of the petitioners was closed. Such negligence may not be as gross as to deprive the petitioners from examining the concerned witnesses for the purpose of exhibiting both the documents which are marked "X" for identification in the deposition of PW.1. In the peculiar facts of this case and in view of the fact that it is pointed out that on account of inadvertence of the concerned Advocate the said witnesses were not examined at the appropriate stage, I find it appropriate to permit the petitioners to examine the two witnesses to produce the said two documents and allow the respondents to cross examine such witnesses, if they are so advised, subject to the

petitioners paying costs of Rs.10,000/- to the respondent No.20, as condition precedent.

7. Subject to the above, I pass the following :

O R D E R

(I) The impugned Order dated 23rd November, 2012 passed in Special Civil Suit No.392/2000/B by the learned Civil Judge, Sr. Division, Mapusa is quashed and set aside.

(II) The petitioners are permitted to examine the said two witnesses and produce the said two documents referred to hereinabove, subject to payment of costs of Rs.10,000/- to the respondent No.20/defendant No.19 in the suit, as condition precedent.

(III) The learned Judge shall proceed to examine the said witnesses and permit the respondents to cross examine such witnesses, if they so desire, and proceed to dispose of the suit in accordance with law.

(IV) Rule is made absolute in the above terms.

In view of the disposal of the writ petition, the Civil Application No.42/2013 also stands disposed of.

F.M. REIS, J.

ssm.