

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 320 OF 2015

1. Mr. Martinho Antonio Francisco
Monteiro, alias Anthony Monteiro,
73 years of age, married, Retd. Govt. Officer.
2. Mrs. Sara Monteiro,
daughter of Mr. Benadito Fernandes,
66 years of age,
Housewife, wife of the Petitioner no. 1.

Both Indian National and both residents of
'Luiza', Opp. P. O. Caranzalem,
Tiswadi, Goa.

3. Mrs. Leonilda Afonso
daughter of Mr. Antonio Sebastiao Monteiro
aged 75 years, widow,
residing at 20 Ravenshurst,
Avenue, Hendon, London.
4. Mrs. Fatima Monteiro e Fernandes,
Daughter of Antonio Sebsteao Fernandes,
aged 78 years, widow
Residing at Santo Antonio,
Dos Cavaleiros, Portugal.

Petitioner nos. 3 and 4 are
Represented through their
Power of Attorney, the Petitioner no. 1.

..... Petitioners
(Petitioner no. 1 and 2 are
Plaintiffs no. 1 and 2,
Petitioner no. 3 is Plaintiff
no.4 is Plaintiff no. 6 in
Regular Civil Suit no.
253/2000/D)

V e r s u s

1. Umelina Fernandes e Martins
Major, widow of late Jopse Francisco Martins,
Residents of Martinsalem Morod,
Caranzalem, Goa (since expired
Through her legal heirs)
- 1a. Mr. Caetano Martins

Major, married, Indian National

- 1b. Mrs. Mauricia Martins
Major, married, Indian National,
- 1c. Mr. Querobino Martins,
Major, married, Indian National,
- 1d. Mrs. Lavina Martins,
Major, married, Indian National,
Both resident of H. No. (not known)
Marigold Building,
St. Inez, Panaji, Goa.
- 1e. Mr. Minguel Joao Martins alias Babush Martins
Major, married, Indian National,
- 1f. Mrs. Goretti Martins,
Major, married, Indian National

Both residents of H. No. (not known)
at Martisalem Morod,
Caranzalem, Goa.
- 1g. Mr. Fernando Martins,
Major, bachelor, Indian National,
Residing at H. No. (not known),
Martisalem Morod,
Caranzalem, Goa.
- 1h. Mrs. Savia Godinho,
Major, married, Indian National
- 1i. Mr. Antonio Martins,
Major, married,
Indian National,

Both residents of H. No. (not known)
at Martisalem Morod,
Caranzalem, Goa.
- 1j. Mr. Francsico Xavier Martins,
Major, bachelor, Indian National,
residents of H. No. Not known
at Martisalem Morod,
Caranzalem, Goa.

- 1k. Mrs. Mariquinha Carvalho,
Major, widow, Indian National,
- 1l. Mr. Arvind Carvalho, (since deceased)
Through his legal representatives,
- 1l(i) Mr. Savio Irwin alias Arvindo Carvalho,
son of late Irwin alias Arvindo Carvalho
Major of age, bachelor, service,
Indian National.
- 1l(ii) Miss Siano Irwin alias Arvindo Carvalho,
Daughter of late Irwin alias Arvindo Carvalho
Major of age, spinster, service,
Indian National,
- 1l(iii) Miss Sonia Irwin alias Arvinho Carvalho,
Daughter of late Irwin alias Arvindo Carvalho
Major of age, spinster, service,
Indian National,
All residents of H. No. 21,
Pale, Velsao, Cansaulim, Goa.
- 1m. Mrs. Lourdes Dias,
Major of age, widow, housewife,
Indian National.
- 1n. Mr. Ralph Dias (since deceased)
through his legal representatives,
- 1n(i) Mr. Charles Vivek dias,
Son of late Ralph Dias,
Major of age, bachelor, service,
Indian National,
All above are resident of
C/o. Kripa Foundation, Mount Carmel Church
Bandra, Mumbai – 50.
- 1n(ii) Mr. Vadin Dias,
Son of late Ralph Dias,
Major of age, bachelor, service,
Indian National, resident of
Charles Manor, 29th Road, 79 TPS-III,
Pali, Bandra, Mumbai-50.
- 1n(iii) Miss Vanessa Dias,
Daughter of late Ralph Dias,
Major of age, spinster, service,

Indian National, resident of
C/o. Kripa Fondation, H/36,
Papal Seminary Villa,
Hingne Khurd, Pune,
Singhabad Road, Vithal Wadi,
Pune 411 051.

1o. Mrs. Alice Lopes,
Major, married, Service,
Indian National,.

1p. Mr. Oscar Lopes,
Major, married, service,
Indian National.

Both residing at C/o Accounts Office,
o/o Superintending Engineer,
Electricity Circle *I,
Electricity Department,
Aquem, Margao, Goa.

1q. Mrs. Fatima Mendonca,
Major, married, housewife,
Indian National,

Both residents of H. No. (not known)
Dondrem, Taleigao, Goa.

..... Respondents

Mr. Shivan Desai, Advocate for the Petitioners.

Mr. Jude Sequeira, Advocate for the Respondent no. 1(b).

Respondent no. 1(c)/Defendant no. 4, in person.

Coram :- F. M. REIS, J

Date : 31st July, 2015.

ORAL JUDGMENT

Heard Shri Shivan Desai, learned Counsel appearing for the
Petitioners and Respondent no. 1(c)/Defendant no. 4 in the suit, is present in
person.

2. Rule. Heard forthwith with the consent of the learned Counsel. The notice to the remaining Respondents stands dispensed with as the only party concerned with the impugned Order appears to be Respondent no. 1(c)/Defendant no. 4 in the suit.

3. Upon hearing the learned Counsel appearing for the respective parties and taking note of the impugned order passed by the learned Judge dated 06.02.2015, whereby the cross examination of Dw.1 by the Petitioner came to be closed, I find that in the interest of justice and the peculiar facts of the case, another opportunity is to be given to the Petitioners to proceed to cross examine Dw.1/Respondent no. 1(c), who is present in Court. Though it was pointed out by Respondent no. 1(c), the party in person that the matter is being adjourned on a number of occasions, the records however reveal based on the contentions of Mr. Shivan Desai, learned Counsel appearing for the Petitioner that the matter was adjourned on two occasions to enable the Petitioners to proceed with the cross examination. It is pointed out by Shri Shivan Desai, that on account of unavoidable circumstances, the Advocate of the Petitioners could not be present when the matter was called out though he reached late. These facts are stated by the Petitioners on oath in the above Writ Petition and stand uncontroverted.

4. In such circumstances, considering that the suit was of the year 1991, I find that the Petitioners have to pay compensatory costs to the Respondent no. 1(c) as condition precedent to proceed with the cross examination of the Dw.1.

The costs are quantified at Rs.15,000/- to be paid by the Petitioner to the Respondent no. 1(c).

5. In view of the above, I pass the following :

ORDER

(i) The impugned order dated 06.02.2015 to the extent it closes the cross examination of Dw.1, by the Petitioners is quashed and set aside subject to the payment of costs of Rs.15,000/- to the Respondent no. 1(c)/Defendant no. 4 in the suit, as condition precedent.

(ii) The learned Judge shall proceed with the cross examination of Dw.1 on any mutual convenient date of the Petitioners and the Respondent no.1(c).

(iii) Shri Shivan Desai, learned Counsel appearing for the Petitioners, upon instructions, further states that the Petitioners shall co-operate with the learned Trial Court and not seek unnecessary adjournment.

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

F .M. REIS, J.

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