

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 237 OF 2014

MR. SEBASTIAN XAVIER FERNANDES AND
ANR.,

... Petitioners

Versus

MRS. JOVITA B. FERNANDES AND 5
ORS.,

... Respondents

Mr. Valmiki Menezes, Advocate for the Petitioners.

Mr. Gaurish Agni, Advocate for the Respondent Nos. 1, 2 and 3.

None for the other Respondents.

CORAM:- C. V. BHADANG, J.

DATE:- 1st OCTOBER, 2015.

ORAL ORDER:

By this petition, the petitioners are challenging the order dated 05.08.2013, passed by the learned Civil Judge Junior Division, Mapusa in Regular Civil Suit No. 181/2004/F, by which the application filed by the respondent no. 1 (original defendant no. 1), for production of additional documents has been allowed.

2. The brief facts are that the petitioners have filed a suit for declaration that they are the owners of the property, which is

the subject matter of the dispute and for injunction. It is undisputed that after the parties led evidence and when the suit was fixed for arguments, an application came to be filed by the respondent no. 1, for production of the following documents:

(a) Notarized copy of the certificate issued by Directorate of Settlement and Land Records, Panaji, Goa, showing the corresponding new survey number with respect to the old cadastral number determined by superimposing new survey map on old cadastral survey map.

(b) The copy of application dated 24.05.2013.

(c) The copy of plan in respect of 25 Adicos Ou Chamaranchi Vadi of Assagao (suit property).

3. The prayer was opposed on behalf of the petitioners on the ground that the production is sought at a belated stage, after the evidence of the parties was over. It was contended that the first respondent did not make out a case, as to why the documents were not produced earlier. The learned trial Court has allowed the production of documents. The learned trial Court found that the

documents sought to be produced are in the nature of public record and a certificate containing information of the public record. The learned trial Court also found that the documents were material for determining the real issue in controversy and no prejudice would be caused to the plaintiffs, as they will have an opportunity to rebut the same. Feeling aggrieved, the petitioners are before this Court.

4. I have heard Mr. Menezes, the learned Counsel appearing for the petitioners and Mr. Agni, the learned Counsel appearing for the respondent nos. 1, 2 and 3. There is no appearance on behalf of the other respondents, though served.

5. It is submitted by Mr. Menezes, the learned Counsel for the petitioners that the impugned order overlooks the provisions of Order 8 Rule 1-A (3) of C.P.C. and Order 13 Rule 1 of C.P.C. It is submitted that under Order 8 Rule 1-A of C.P.C., the defendant is duty bound to produce the documents upon which the relief is claimed or which are relied upon by the defendants. It is submitted that having regard to the defence as raised by the defendant no. 1, the documents if at all, ought to have been

produced earlier. It is submitted that the trial Court has failed to consider this aspect while granting the production. The learned Counsel in the alternative has submitted that the petitioners be granted opportunity to contest the effect of the documents as produced.

6. On the contrary, Mr. Agni, the learned Counsel for the respondent nos. 1, 2 and 3 has supported the impugned order. It is submitted that the trial Court has merely allowed the production of the documents, which is in the nature of a public record. The learned Counsel would submit that, as has been rightly observed by the learned trial Court, the petitioners would get an opportunity to rebut the same.

7. I have considered the rival circumstances and the submissions made. The provisions of Order 8 Rule 1-A (3) of C.P.C. shows that where a document ought to have been produced in the Court by the defendant under Rule 1-A, is not so produced, the defendant shall not be allowed to produce the same without the leave of the Court and no such document, shall be received in evidence on his behalf at the hearing of the suit. It is clear that

Order 8 Rule 1 of C.P.C. speaks about production of such document with the leave of the Court. Precisely, by the impugned order the Court has granted such leave. Order 13 Rule 1 of C.P.C. only provides that the parties shall produce the original document of which the copies are already produced. I do not find that provisions of Order 13 Rule 1 of C.P.C. would be relevant for the present purpose.

8. On hearing the learned Counsel for the parties and on considering the nature of the controversy involved, it cannot be disputed that the documents would be relevant in deciding the real controversy in dispute as observed by the trial Court. It is needless to mention that what is allowed is only production of document. It is trite that the production of a document, its relevancy and proof are different aspects. The trial Court has observed that the petitioners shall get an opportunity to rebut the said documents. It is needless to mention that the same will be subject to proof in accordance with law.

In that view of the matter, no interference is called for in the impugned order in the exercise of the extra ordinary jurisdiction of this Court.

In the result the Writ Petition is dismissed, with no order as to costs.

C. V. BHADANG, J.

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