

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 290 OF 2015

1. Shri Sankappa Shetty,
son of late Vassu Shetty,
60 years old, businessman,
and his wife;
2. Smt. Jayanti Shetty,
major of age, housewife,

Both Indian Nationals and residents of
House no. 102, 'Chrismichelle', Constancio
Roque da Costa Road, Pajifond, Margao,
Goa. 403 601.

..... Petitioners

V e r s u s

1. Sarita Sadanant Vente nee Geni Xete Raicar
widow of late Sadanand Narayan Vente,
67 years old, housewife
2. Narayan Sadanand Vete,
son of late Sanadand Narayan Vente,
33 years old, Medical Practitioner, married,
and his wife;
3. Smt. Pooja Narayan Vete,
daughter of Padmanabh Shet Talaulikar
28 years old, housewife,

All Indian Nationals and residents of
House no. 323, Old Railway Station Road,
Malbhat, Margao, Goa, 403 601.

..... Respondents

Mr. S. G. Desai, Senior Advocate with Mr. B. Mhatme, Advocate for the Petitioners.

Mr. Sudesh Usgaonkar and Ms. Rosette Marie Pereira, Advocate for the Respondents.

Coram :- **F. M. REIS, J**

Date : **15th June, 2015.**

ORAL JUDGMENT

Heard Shri S. G. Desai, learned Senior Advocate appearing for the Petitioner and Shri Sudesh Usgaonkar, learned Counsel appearing for the Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents waives service.

3. I have heard Shri S. G. Desai, learned Senior Advocate appearing for the Petitioners and Shri Sudesh Usgaonkar, learned Counsel appearing for the Respondents.

4. The main contention of Shri Desai, learned Senior Counsel appearing for the Petitioners, is that the learned Judge by the impugned Order has refused to frame the issues proposed by the Petitioners though there were specific defences raised on those counts.

5. On the other hand, Shri Sudesh Usgaonkar, learned Counsel appearing for the Respondents, has supported the impugned Order and pointed out that the learned Judge has rightly refused to frame the issues as, according to him, all the contentions sought to be raised by the Petitioners are already covered by the issues framed.

6. Upon hearing the learned Counsel, I find that though the learned

Judge has framed issue no. 1 casting the burden on the Respondents, nevertheless, it is not disputed that there were specific defences raised in the written statement that the suit Agreement has been substituted by a subsequent Agreement dated 20.04.1981. Considering the provisions of Order 14 Rule 1 of the Civil Procedure Code, as there was a specific defence on that count, I find that the learned Judge ought to have framed issue no. 1 as proposed by the Petitioners herein. As far as proposed issue nos. 5 and 6 are concerned, Shri Sudesh Usgaonkar, learned Counsel appearing for the Respondents, has pointed out that the proposed issue nos. 5 and 6 have been framed by the learned Judge.

7. Shri S. G. Desai, learned Senior Advocate, appearing for the Petitioners, has also raised a grievance that the issue with regard to the defence of the Petitioners that the suit is barred in terms of the provisions of the Goa Daman and Diu (Buildings and Eviction Act 1968) has not been framed. However, on perusal of the issues framed by the learned Judge, I find that the issue based on such defence has in fact been framed and, as such, the said contention cannot be accepted.

8. Shri S. G. Desai, learned Senior Counsel appearing for the Petitioners, has also raised a grievance that the proposed issue nos. 3 and 4 have not been framed by the learned Judge. Considering the issue which have been framed, I find that as far as proposed issue no. 3 is concerned, it is a defence to issue nos. 1 and 3 framed by the learned Judge and as far as proposed issue no. 4 is concerned, the same is covered by issue no. 5 framed by the learned Judge by

Order dated 08.01.2014.

9. In view of the above, subject to framing the issue no. 1 as referred to herein above, I find no case is made out for any interference in the impugned Order, Rule stands disposed of accordingly.

F .M. REIS, J.

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