

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 489 OF 2014

1. Mr. Gana L.Kunkolienkar,
aged about 65 years,
businessman; and his wife
2. Mrs. Linabai G. Kunkolienkar,
aged about 52 years,
both residents of House no.42/B,
Medkevaddo, Dicarpale,
Navelim, Salcete, Goa.
Represented by attorney
Pramila G. Kunkolienkar

V e r s u s

1. Mrs. Esperanca Costa,
widow of late Domingos Costa,
aged about 75 years, labourer,
2. Mr. Arcanjo Costa,
son of late Domingos Costa,
aged about 28 years, bachelor;
3. Miss Magdalena Costa,
daughter of late Domingos Costa,

aged about 50 years,

All residents of House no.42
(Magdalena Bar);
Medkevaddo, Dicarpale,
P. O. Navelim, Salcete, Goa.

4. Mr. Luis alias Pauto Costa,
aged about 51 years,
son of late Antonio Costa,
resident of House no.42,
Medkevaddo, Dicarpale,
P. O. Navelim, Salcete, Goa. Respondents.

Mr. Caetano Mascarenhas, Advocate for the Petitioners.

Mr. Prasheen Lotlikar, Advocate for Respondents no. 1 To 3.

CORAM: N. M. JAMDAR, J.
DATE: 4TH FEBRUARY, 2015.

ORAL ORDER:

By order dated 4th September, 2014, while issuing notice, this Court had stated that the petition will be disposed off finally at the admission stage. The notices have been

served. Hence, the petition is taken up for final disposal.

2. The petition requires to be allowed and the matter be sent back to the learned Civil Judge, Junior Division, Margao, on a short ground that the Civil Judge has not given any reasons while passing the impugned order.

3. The petitioner had filed an application for withdrawal of the suit with liberty to file a fresh suit. This application has been rejected by the learned Civil Judge by the impugned order dated 2nd May 2014. In the first part of the impugned order, the learned Judge has narrated few facts. Thereafter, only arguments of the counsel are reproduced and there is a discussion on the case law cited. Thereafter, the learned Civil Judge directly has passed the operative order of dismissing the application. There is absolutely no application of mind by the learned Judge as to the rival contentions.

4. Mr. Lotlikar, the learned counsel for the

respondents sought to argue various points based on his reply, however, these points are not considered by the learned Civil Judge. In view of this position, the writ petition is allowed. The impugned order dated 2nd May, 2014 passed by the Civil Judge, Junior Division-E at Margao, below Exhibit D-106 in Regular Civil Suit no.102/2007/E is quashed and set aside. The application filed by the petitioners under Exhibit D-106 stands restored to file to be disposed off as per law. All contentions of both the parties are kept open.

5. The learned Civil Judge will take up this application for consideration by giving it a priority.

N. M. JAMDAR, J.

AP/-