

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.401 OF 2015**

Rabiya Bi,
53 years of age,
widow of late Shaikh Illias,
r/o. H.No.155/7,
Durgabhat, Ponda, Goa.

... Petitioner

Versus

1. Keshav Vassudev Bhat Kelkar (since deceased)
 - 1(a) Shri Gajanann Keshav Kelkar,
major of age,
 - 1(b) Smt. Prabha G. Kelkar,
major of age,
 - 1(c) Smt. Savitri Keshav Kelkar,
major of age,
 - 1(d) Shri Madhukar Narayan Joshi,
major of age,
 - 1(e) Smt. Kunda @ Manisha M. Joshi,
major of age,
all residents of Durgabhat,
Ponda, Goa.
2. Smt. Kulsumbi, widow of Issak (since deceased)
 - 2(a) Shri Shaikh Umar (expired)
 - 2(b) Shri Shaikh Illias (expired)
 - 2(b)(i) Shri Shaikh Rafique,
major of age,
 - 2(b)(ii) Miss Asma Bi,
major of age,
 - 2(b)(iii) Miss Asifa Bi,
major of age,
 - 2(b)(iv) Smt. Hawa Bi (expired),
 - 2(b)(v) Smt. Harmina Bi,
major of age,
All residents of Durgabhat,
Ponda, Goa.
3. Shri Adu alias Adam,
son of Issak,

75 years of age,
resident of Durgabhat, Ponda, Goa. Respondents

Mr. A.D. Bhobe, Advocate for the Petitioner.
Mr. P. Rao, Advocate for Respondent No.1.

Coram:- F. M. REIS, J.

Date:- 31st July, 2015

ORAL JUDGMENT :

Heard Mr. A.D. Bhobe, learned Counsel appearing for the petitioner and Mr. P. Rao, learned Counsel appearing for the respondent no.1.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for respondent no.1 waives service.

3. The above petition takes exception to an order dated 2/06/2015 passed by the learned Civil Judge Senior Division at Ponda whereby an application filed by the petitioner for leave to rely upon the additional documents came to be dismissed.

4. Mr. A.D. Bhobe, learned Counsel appearing for the petitioner has pointed out that the petitioner desires to rely upon two judgments in the suit wherein the respondents were parties in respect of the disputed property. The learned Counsel further points out that such judgments are

very much relevant for the purpose of deciding the matter in controversy as according to him the said two judgments are in respect of the disputed property and the finding therein are binding on the respondents. The learned Counsel further points out that the suit filed by the respondents is for eviction as well as for demolition of a structure existing in the same property and, as such, according to him such judgments would be relevant for deciding the matter in controversy. The learned Counsel further points out that besides the said two judgments the petitioner also sought to produce 7 documents which were relied upon in the list of documents filed along with the written statement and the copies thereof are already part of the record. The learned Counsel further submits that merely because the list was not in terms of the form specified under Order 13 Rule 1 of the Civil Procedure Code, the learned Judge has refused leave to the petitioner. The learned Counsel, as such, submits that the impugned order be quashed and set aside.

5. On the other hand, Mr. P. Rao, learned Counsel appearing for the respondent no.1 has submitted that the judgments sought to be produced are not at all relevant to decide the matter in controversy and the learned Judge was as such justified to refuse leave to produce such documents by the petitioner. The learned Counsel further points out that the petitioner has not laid their foundation in the pleadings to place reliance on such

documents sought to be produced by the petitioners. The learned Counsel further submits that the learned Judge has observed in the impugned order that the list of documents has not been filed by the petitioner and, as such, the learned Judge has rightly refused leave to the petitioner. The learned Counsel further points out that as the documents are not at all material to decide the matter in controversy, the learned Judge was justified to pass the impugned order. The learned Counsel, has also pointed out that by producing such documents the petitioner wants to resile from their admission in the pleadings.

6. I have considered the submissions of the learned Counsel and I have also gone through the records. The fact that the judgments dated 17/09/2011 of the learned District Court and 25/10/2004 of the learned Trial Court are in respect of the properties which are subject matter in the suit has not been disputed. The learned Judge has rejected leave to the petitioner on the ground that such documents are not relevant to decide the matter in controversy. The relevancy or otherwise of such documents is a matter to be examined in terms of the Evidence Act at the stage of appreciating the evidence on record produced by the parties. At this stage, the question of going into the relevancy of the documents without examining the evidence of the parties is not at all open to the learned Judge whilst examining the application only for leave to rely

upon the documents. What is material at this stage is to examine whether the documents are pertaining to the disputed property and whether there is any doubt about the authenticity or otherwise of such documents. It is not the case of the respondents that such documents have been fabricated by the petitioner. Considering that the judgments sought to be relied upon are in connection with the proceedings before the learned District Judge and the learned Trial Court, in respect of the same disputed property, I find that there is no justification for the learned Judge to refuse leave to the petitioner to rely upon the said documents. No doubt, the issue with regard to the relevancy of such documents is left open and the learned Judge shall examine such aspect at the time of appreciation of the evidence of the parties.

7. With regard to the next grievance of the petitioner, I find that on perusal of the written statement filed by the petitioner there is a handwritten list of documents filed by the petitioner and duly signed by the learned advocate appearing for the petitioner before the trial Court. In such circumstances, the finding of the learned Judge that no list of documents has been filed by the petitioner is not justified. Such list is to be considered in terms of Order 8 Rule 2 of the Civil Procedure Code and, as such, merely because the list is not in the form provided under Order 13 Rule 1 of the Civil Procedure Code cannot in any way defeat

the right of the petitioner to rely upon such documents. Mr. Bhobe, the learned Counsel for the petitioner submits that copies of the said documents have been produced along with the said written statement. Mr. P. Rao, the learned Counsel for the respondent no.1 disputes the said contention. In any event, the petitioner would be entitled to rely upon the said documents copies of which are already produced on record based on the list of documents filed by the petitioner at the time of the filing of the written statement. Subject to the above, the petitioner ought to have been given leave to rely upon the said documents. Merely granting leave to rely upon documents does not dispense the parties to prove the contents of the documents in accordance with law.

8. In view of the above, I pass the following order:

O R D E R

(i) The impugned order dated 2/06/2015 is quashed and set aside.

(ii) The petitioner is granted leave to rely upon the documents in terms of the application dated 23/04/2015 in the light of the observations made herein above.

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

F. M. REIS, J.

NH/-