

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 487 OF 2015

MR. ANTONIO INACIO FRANCISCO PONTES
AND 3 ORS.,

... Petitioners

Versus

MR. OTOLINO MARIANO FERRAO AND 19
ORS.,

... Respondents

Shri. V. Sardesai, Advocate for the petitioners.

Coram:- F. M. REIS, J.

Date:- 3rd July, 2015

P.C.:

Heard Shri V. Sardesai, learned Counsel appearing for the petitioners.

2. The above petition challenges an order passed by the learned Judge framing additional issues, based on an application filed by the petitioners. The learned Counsel for the petitioners has pointed out that the learned Judge has erroneously considered that the petitioners are claiming ownership in respect of the property bearing Survey No.47/20, as well as Survey No. 47/20-A of Assonora Village. The learned Counsel also points out that though the issue of cause of action has been framed, nevertheless, there is no specific issue framed as to whether respondents prove that the petitioners had knowledge of the deed of partition.

3. I have considered the submissions of the learned Counsel and with his assistance, I have gone through the impugned order, as well as the application filed by the petitioners for framing additional issues and the issues which were already framed by the learned Judge.

4. With regard to the first contention of the learned Counsel appearing for the petitioners, on perusal of issue No.2, as framed by the learned Judge, the fact that the original property is surveyed under No.47/20, which was thereafter surveyed under No.47/20-A is taken care of. In such circumstances, the contention of the learned Counsel appearing for the petitioners that a specific issue has to be framed in connection with the property surveyed under No.47/20-A, would not survive.

5. With regard to the second contention of the learned Counsel appearing for the petitioners, on perusal of the issues framed by the learned Judge, I find that an issue of limitation has already been framed. Consequently, the issue sought to be raised by the petitioners would have to be established in the context of the findings on such an issue.

6. In such circumstances, I find that there is no jurisdictional error committed by the learned Judge which would call for interference of this Court. The law provides that issues can be

framed and re-cast at any stage of the suit. As such, there is no failure of justice to the petitioners in case this Court does not interfere with the impugned order, at this stage.

7. Hence, the petition stands rejected.

F. M. REIS, J.

ssm.