

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 535 OF 2012

1. Shri Anant Atmaram Malik,
(since deceased through his LR's)
 - 1a) Smt. Anandi Anant Malik
Wife of late Shhri Anant Atmaram Malik,
Major, housewife
 - 1b) Shri Shantaram Anant Malik,
Son of late shri Anant Atmaram Malik,
Major, married, service.
 - 1c) Shri Madhukar Anant Malik,
Son of late Shri Anant Armaram Malik,
Major, married, service
 - 1d) Shri Sitaram Anant Malik,
Son of late Shri Anant Armaram Malik,
Major, married, service
 - 1e) Shri Jayant Anant Malik
Son of late Shri Anant Armaram Malik,
Major , married, service.

All Indian Nationals and Residing at
H. No. 335, Hassapur, Pernem, Goa.

2. Shri Shankar Atmaram Malik,
Son of late Shri Atmaram Malik,
Major, married, Indian National and
Residing at H. No. 335,
Hassapur, Pernem, Goa.
3. Smt. Parvati Shankar Malik,
Wife of Shri Shankar Atmaram Malik,
Major, married, Indian National and
Residing at H. No. 335,
Hassapur, Pernem, Goa.
4. Shri Sajo Armaram Malik
Son of late Shri Atmaram Malik,
Major, married, Indian National and
Residing at H. No. 335,
Hassapur, Pernem, Goa.

5. Shri Sambaji Atmaram Malik,
Son of late Shri Atmaram Malik,
Major, married, Indian National and
Residing at H. No. 335,
Hassapur, Pernem, Goa.
 6. Smt. Devki Sambaji Malik,
wife of Shri Sambaji Malik,
Major, married, Indian National and
Residing at H. No. 335,
Hassapur, Pernem, Goa.
 7. Shri Krishna Atmaram Malik,
Son of late Shri Atmaram Malik,
Major, married, Indian National and
Residing at H. No. 335,
Hassapur, Pernem, Goa.
 8. Smt. Aarti Krishna Malik,
Wife of Shri Krishna Malik,
Major, married, Indian National and
Residing at H. No. 335.
Hassapur, Pernem, Goa
 9. Shri Sahadev Atmaram Malik,
Son of late Shri Atmaram Malik,
Major, married, Indian National and
Residing at H. No. 335,
Hassapur, Pernem, Goa.
 10. Smt. Sunita Sahadev Malik,
Wife of Shri Sahadev Malik,
Major, married, Indian National and
Residing at H. No. 335,
Hassapur, Pernem, Goa.
 11. Shri Vinayak @ Vinu Atmaram Malik,
Son of late Shri Atmaram Malik,
Major, married, Indian National and
Residing at H. No. 335,
Hassapur, Pernem, Goa.
 12. Smt. Vilasini Vinayak Malik,
Wife of Shri Vinayak @ Vinu Atmaram Malik,
Major, married, Indian National and
Residing at H. No. 335,
Hassapur, Pernem, Goa.
-Petitioners

V e r s u s

1. Shri Ajit Shankar Malik,
Son of late Shri Shankar Malik,
Major, married, Indian National
Residing at H. No. Not known
Hassapur, Pernem, Goa.
2. Shri Gangaram Ramchandra Malik,
Son of late Shri Ramchandra Malik,
Major, married, Indian National and his wife
3. Smt. Sulochana Gangaram Malik,
Wife of Shri Gangaram R Malik,
Major, married, Indian National and
Both residing at H. No. Not known,
Hassapur, Pernem, Goa.
4. Shri Nagu Arjun Malik,
(since deceased through his LR's)
 - a) Shri Arjun Nagu Malik,
Son of late Shri Nagu Arjun Malik,
Major, married, Indian National and his wife
 - b) Smt. Annapurna Arjun Malik,
Wife of Shri Arjun N. Malik,
Major, married, Indian National and

Both residing at Near Sri Sateri Temple
Hassapur, Pernem, Goa.
 - c) Radhabai Krishna Dessai,
Wife of late Shri Krishna Dessai,
Major, widow, housewife,
Indian National.
 - d) Shri Yeshwant Krishna Dessai,
Son of late Shri Krishna Dessai,
Major, service, Indian National,
 - e) Shri Narayan Krishna Dessai,
Son of late Shri Krishna Dessai,
Major, service, Indian National,

- f) Shri Gangaram Krishna Dessai,
Son of late Shri Krishna Dessai,
Major, service, Indian National,

AI residing at Ker, Taluka Dodamarg
District Sindhudurg, Maharashtra.

5. Shri Ladu Bodhu Malik,
(since deceased through his LR's)

- a) Shri Shantaram Ladu Malik,
(since deceased through his Lrs)

- a(i) Smt. Rewatibai Shantaram Malik,
Wife of late Shri Shantaram Ladu Malik,
major, married, housewife, Indian National.

- a(ii) Shri Zilu Shantaram Malik
Son of late Shri Shantaram Malik,
Major, married, Indian National,

- a(iii) Shri Vishwas Shantaram Malik,
son of late Shri Shantaram Malik,
Major, bachelor, Indian National

- a(iv) Shri Sanjay Shantaram Malik,
son of late Shri Shantaram Malik,
Major, bachelor, Indian National,.

- a(v) Shri Sharad Shantaram Malik,
son of late Shri Shantaram Malik,
Major, married, Indian National.

All residing at H. No. not known
Hassapur, Pernem, Goa.

- 5b(i) Smt. Kashibai Vishram Sawant,
Wife of late Shri Vishram Sawant,
Major, married, housewife,
Indian National

- b(ii) Shri Babu @ Mohan Vishram Sawant,
Son of late Shri Vishram Sawant,
Major, married, Indian National

- b(iii) Smt. Savitri Babu @ Mohan Sawant,
wife of Shri Babu @ Mohan Vishram Sawant,
Major, married, housewife, Indian National

- b(iv) Shri Santosh Vishram Sawant,
Son of late Shri Vishram Sawant,
Major, married, Indian National,

All Residing at Dignem, Post Morgao,
Tauka Sawantwadi,
District Sindhudurg, Maharashtra
- 5c) Shri Vasant Ladu Malik,
since deceased through his LR's)
- 5c(i) Smt. Jyostna Vasant Malik,
Wife of late shri Vasant Ladu Malik,
Major, married, housewife, Indian National
- 5c(ii) Shri Balu Vasant Malik,
Son of late Shri Vasant Ladu Malik,
Major, service, Indian National,
- 5c(iii) Shri Laxmikant Vasant Malik,
Son of late shri Vasant Ladu Malik
Major, service, Indian National,
- 5c(iv) Ms. Kishori Vasant Malik,
Daughter of late Shri Vasant Ladu Malik,
Major, Indian National,
- 5c(v) Ms. Nirmla V asant Malik,
Daughter of late shri Vasant Ladu Malik
Major, Indian National,

All residing at Near Sharvani Temple,
Saligao, Bardez, Goa.
- 5d(i) Shri Madhu Ladu Malik,
Son of late Shri Ladu Bodhu Malik,
Major, married, service, Indian National,
- 5d(ii) Smt. Madhuri Madhu Malik,
Wife of Shri Madhu Ladu Malik
Major, married, housewife, Indian National,

Both residing at H. No,. Not known,
Hassapur, Pernem, Goa.
- 5e(i) Shri Bodhu Ladu Malik,
Son of late Shri Ladu Bodhu Malik,

major, married, service, Indian National,

5e(ii) Smt. Saraswari Bodhu Malik,
wife of Shri Bodhu Ladu Malik,
Major, married, housewife, Indian National,

Both residing at H. No.,. Not known,
Hassapur, Pernem, Goa.

6. Shri Soma Gonu Malik,
(since deceased through his LR's)

6(i) Smt. Satyavati Soma Malik, (Since deceased)
wife of late Shri Sona Gonu Malik,
major, widow, housewife, Indian National,

6(ii) Shri Vishnu Soma Malik,
Son of late Shri Soma Gonu Malik,
Major, married, service, Indian National,

6(iii) Smt. Rukmini Vithu Malik,
wife of Shri Vithu Soma Malik,
Major, married, housewife, Indian National,

6(iv) Shri Gonu Soma Malik,
Son of late shri Soma Gonu Malik,
Major, married, service, Indian National,

6(v) Smt. Gopika Gonu Malik,
Wife of Shri Gonu Soma Malik,
Major, married, housewife, Indian national,

All residing at H. No. 360,
Hassapur, Pernem, Goa,

7. Village Panchayat of Chandel-Hasapur,
Through its Sarpanch,
Chandel-Hassapur,
Pernem, Goa.

..... Respondents

Mr. Deepak Gaonkar, Advocate for the Petitioners.

Mr. D. Pangam, Advocate for the Respondent nos. 1, 2, 3, 4a, 4b, 5e(i), 5(e)(ii),
5d(i), 5d(ii), 6(ii) and 6(iii).

Coram :- F. M. REIS, J

Date : 17th July, 2015.

ORAL JUDGMENT

Heard Shri Gaonkar, learned Counsel appearing for the Petitioners and Shri Pangam, learned Counsel appearing for the Respondent nos. 1, 2, 3, 4a, 4b, 5e(i), 5(e)(ii), 5d(i), 5d(ii), 6(ii) and 6(iii).

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

3. The short point for consideration in the above Writ Petition upon hearing the learned Counsel appearing for the respective parties is whether the learned Judge has failed to exercise jurisdiction vested in the Court and has acted with immaterial irregularity whilst passing the impugned Order dated 17.11.2011 refusing leave to produce an affidavit of a Surveyor along with a Surveyor's report and sketch in support of the case filed by the Petitioners?

4. The Petitioners filed a suit for declaration of mandatory injunction and permanent injunction in respect of a disputed property against the Respondents. It was the claim of the Petitioners that there was an encroachment in the property belonging to the Petitioners which was strongly disputed by the Respondents in their written statement. At the time of the consideration of the application for temporary injunction, the Petitioners filed an application seeking leave to produce the affidavit of the Surveyor along with the report and the sketch. The application

was opposed by the Respondents and ultimately by the impugned Order dated 17.11.2011, the application came to be rejected.

5. The learned Counsel appearing for the Petitioners has pointed out that the suit filed by the Petitioners is on the basis that there is an encroachment in the property and, as such, the report of the Surveyor along with the sketch are very material in deciding the matter in controversy. Learned Counsel has further pointed out that the learned Judge has erroneously rejected the application on the ground that the Respondents did not get an opportunity to meet the said document in their written statement. The learned Counsel further submits that the learned Judge has acted in material irregularity whilst passing the impugned Order which calls for interference by this Court under Article 227 of the Constitution of India.

6. On the other hand, Shri Pangam, learned Counsel appearing for the respective Respondents, submits that there was negligence on the part of the Petitioners in not producing the document at the time of the filing of the suit and, on this count itself, the learned Judge has rejected the application. Learned Counsel further pointed out that the said document is irrelevant for deciding the suit as, according to him, the Respondents have not encroached into the property of the Petitioners. Learned Counsel, as such submits, that the Petition be rejected.

7. I have considered the submissions of the learned Counsel and I have also gone through the records. It is not in dispute that the issues in the suit have not been framed and, as such, granting leave to the Petitioners in terms of the

Order 7 Rule 14 of the Civil Procedure Code, would not cause any prejudice to the Respondents. Merely producing the document could not by itself prove the contents thereof the Petitioners would have to provide the Authority and the contents thereof in accordance with law. In such circumstances, the finding of the learned Judge on that aspect is not at all justified. The documents are referable to the dispute between the parties and would as such be material to decide the subject in controversy.

8. In the peculiar facts and circumstances of the case, I find that the learned Judge was as such not justified to pass the impugned Order and refuse leave to the Petitioners to rely upon the Survey report and the sketch prepared by the Surveyor and, as such, the impugned Order cannot be sustained.

9. In view of the above, I pass the following :

ORDER

- (i) The impugned Order dated 17.11.2011 is quashed and set aside.
- (ii) The Petitioners are granted to rely upon the Surveyor's report and the sketch produced by the Surveyor.
- (iii) All contentions of the Respondents with regard to such documents are left open.
- (iv) Rule is made absolute in the above terms.
- (v) Petition stands disposed of.

F .M. REIS, J.

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