

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 558 OF 2013

MR. ANIL C. DIUKAR AND ANR., ... Petitioners
Versus
MR. RAMA CHIMNO DIUKAR ... Respondent

Mr. Devidas J. Pangam, Advocate for the Petitioners.
Mr. S.D. Lotlikar, Senior Advocate with Ms. P. Hegde, Advocate for the Respondent.

Coram:- F. M. REIS, J.

Date:- 24th July, 2015

ORAL ORDER:

Heard Mr. D. Pangam, learned Counsel appearing for the petitioners and Mr. S.D. Lotlikar, learned Senior Counsel appearing for the respondent.

2. The above petition challenges the order passed by the learned Civil Judge Senior Division at Mapusa in Regular Civil Suit No.225/1999 dated 6/08/2013, whereby an application filed by the petitioners for secondary evidence came to be rejected.

3. Mr. Pangam, learned Counsel appearing for the petitioners has submitted that the xerox copies of the subject documents have been produced by the petitioners, but however, according to him though the author of the said documents were examined and has established the existence of the said documents, nevertheless, the learned Judge

proceeded to dismiss the application on the ground that the existence of the original documents has not been established by the petitioners. The learned Counsel further pointed out that great prejudice would occasion to the defence taken by the petitioners in case the impugned order is not set aside as according to him the said documents would not be read in evidence in support of the defence of the petitioners. The learned Counsel has thereafter taken me through the impugned order as well as the records to point out that the learned Judge has erroneously exercised jurisdiction in dismissing leave to lead secondary evidence.

4. On the other hand, Mr. S.D. Lotlikar, learned Senior Counsel appearing for the respondent has supported the impugned order. The learned Senior Counsel has pointed out that the suit filed by the respondent is claiming an easementary right of access to his residential house and as such according to him the alleged documents are not at all relevant for deciding the matter in controversy. The learned Senior Counsel further stated that the suit is unnecessarily being delayed in view of the interim stay order obtained by the petitioners in respect of the suit filed in the year 1999. The learned Senior Counsel, further, submits that the petitioners have not satisfied the circumstance in which the xerox copies of the relevant documents came in their possession, and as such, the learned Judge was justified to pass the impugned order.

5. I have considered the submissions of the learned Counsel and I have gone through the records. Considering the nature of the controversy in the suit, I find that the question of interference in the impugned order at this stage under Article 227 of the Constitution of India is not at all necessary. There is no failure of justice to the petitioners in case the impugned order is allowed to stand as the petitioners can independently prove his case in this proceedings. As such, the petition stands rejected, with liberty to the petitioners to challenge the impugned order, in case any adverse order is passed against the petitioners at the time of the final disposal of the suit in accordance with law. Petition stands disposed of accordingly.

F. M. REIS, J.

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