

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.635 OF 2014

1. Shri Francis Thomas Gonsalves,
S/o Alusio Cecil Gonsalves, major,
married, businessman, r/o
1st Floor, Aquarius,
Miramar, Panaji, Goa.
2. M/s. Souza Estate Developers,
a Partnership Firm, registered
under the Indian Partnership Act,
1932 having its Registered Office
at 1st Floor, Church View Building,
Fr. Agnelo Road, Altinho, Panaji,
Goa, represented by its Partner
Shri Luis Domingos De Menezes Roque
De Souza alia Luis De Souza, duly
constituted Attorney of other
Partner vide Power of Attorney
dated 10.11.1998
3. Shri Luis Domingos De Menezes
Roque De Souza alias Luis De Souza,
major, r/o Altinho, Panaji, Goa.
4. Lucia Maria De Souza,
5. Alice Maria Menezes Roque De Souza,
through their constituted Attorney
Shri Luiz Domingos De Menezes
Roque De Souza alias Luis De Souza,

r/o Altinho, Panaji, Goa.

..... Petitioners

All mentioned above are major in age.

Versus

M.S. Irene Barbosa, major,
married r/o 2/3 Beach Nest,
Miramar, Panaji, Goa,
represented by her Attorney
Smt. Alethea Barbosa,
r/o 2/3 Beach Nest,
Miramar, Panaji, Goa.

....Respondent.

Mr. J. J. Mulgaonkar, Advocate for the Petitioners.

Mrs. A. A. Agni, Senior Advocate with Ms Kalpa Govekar,
Advocate for the Respondent.

CORAM: N. M. JAMDAR, J.

DATE: 18 FEBRUARY, 2015.

ORAL ORDER:

By this petition, the petitioners challenge the order dated 9 September, 2014 passed by the learned Civil Judge Junior Division "C" Court, Panaji, rejecting the application made by the petitioners to produce certain additional documents.

2. The respondent has filed a suit praying for relief of injunction against the petitioners. It is the case of the respondent that the respondent is the owner of two properties bearing survey no. 30 and western half of the survey no.34.

The petitioner filed written statement and contested the claim of the respondent. The petitioner moved an application for producing certain sale deeds on record by application dated 6 September, 2014. The learned civil judge, in the impugned order, came to the conclusion that the documents sought to be produced are of the eastern side of the property and have no connection with the western side that is the subject matter of the suit.

3. Mr. J. J. Mulgaonkar, the learned counsel for the petitioner submitted that unless the documents in respect of the entire property are looked at it will not be possible to determine whether the plaintiff is entitled to relief, even though the relief of the plaintiff is restricted to the western side of the property. Mrs. A. A. Agni, learned Senior Counsel for the respondents submitted that the learned Judge was right in holding that the documents are not relevant.

4. If the application made by the petitioner before the learned civil judge is perused it discloses no ground regarding relevancy of the documents. The application only states that the documents are public documents which are necessary for adjudication, and no prejudice will be caused to the respondent. The learned civil judge therefore cannot be faulted for coming to the conclusion that the documents are not necessary as there are no pleadings whatsoever regarding the relevancy of the documents.

5. However, considering the averments made in the

petition and the argument advanced before me, I am of the opinion that the case of the petitioners should not be completely shut out. There does appear to be reference to the larger property in the plaint. The argument advanced is that the sale deed of the entire property will be material to determine where exactly the suit property lies. Therefore, even though I am not inclined to interfere with the impugned order, I am inclined to observe that if the petitioner files an application giving particulars of the relevancy of the documents, then the learned civil judge may consider the same.

6. This is not to state that any observation is made on the merits of the petitioner's claim but such indulgence is granted only to ensure that injustice is not caused to the litigant because care to aver sufficient pleadings is not taken in the application. However, the learned Civil Judge will consider the application only if it is filed within two weeks from today and that too on its own merits.

No further orders are required to be passed. The petition is accordingly disposed of.

N. M. JAMDAR, J.

Ap/-