

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 290 OF 2016**

1. Mary Pereira, housewife and her husband,
2. Menino Pereira, Advocate by profession,
3. Magdaline Furtado and her husband,
4. Lenny Furtado,
5. Miss Ann Rosario, spinster, retired nurse,
6. Bessa Pereira, service and her husband,
7. Luis Pereira, service.

All major in age, retired (except P1) and having address as House no. nil, Do Rosario Chambers, Opp. The Church, Vasco (being the address of the Power of Attorney holder i.e. plaintiff nos. 1 and 2).

The above named plaintiffs 1 and 3 to 7 are represented by their Power of Attorney Holder.

.... Petitioners

Versus

1. Anant Mahadev Vengurlekar alias Babi Vengurlekar (deceased), businessman, major in age, 2nd floor, flat no. nil, Damodar Chambers, Vasco Da Gama,

Thro. Legal Heirs of Defendant no. 1.

a) Sangam Anant Vengurlekar (son), major in age, business, r/o ground floor, Parwati Nivas, Mailmollem, Vasco.

b) Mahesh alias Baburao Vengurlekar, (son) deceased.

c) Girish Anant Vengurlekar (son), deceased.

d) Mrs. Siddhi Vengurlekar, w/o Sangam Vengurlekar, housewife, business, r/o ground floor, Parwati Nivas, Mailmollem, Vasco.

e) Mrs. Mayuri Vengurlekar, w/o late Baburao Vengurlekar and her two children:

1e)(i) Miss Mahima Vengurlekar

1e)(ii) Master Mahip Vengurlekar.

Both children i.e. 1(e)(i) and 1(e)(ii) are minor and represented by their mother Mayuri Vengurlekar as Guardian.

Resident of Flat/Shop No. 1, Anand Dhara Building, Ground Floor, Dramila Apartment, Mangor Hill, Goa.

f) Mrs. Suprita Vengurlekar w/o late Girish A. Vengurlekar, service at present employed at Citizen Co-op. Bank, Vasco-da-Gama and r/o 1st floor, Parwati Nivas, Mailmollem, Vasco da Gama, Goa.

g) Mrs. Milan D. Dhuri, d/o late Anant Vengurlekar and her husband.

h) Sadanand Dhuri, c/o respondent no. 1(a).

2. Isabela D'Souza (since deceased Rep. by def. Nos. 3 and 4), widow of Jose D'Souza, housewife, 63 years of age.
3. Shri Manuel D'Souza, s/o Jose D'Souza, 43 years of age, service.
4. Marianinha D'Souza, w/o Manuel D'Souza, 38 years of age, service.

Def. Nos. 3 and 4, r/o House no. nil,
Koshy Chambers, 1st Floor, Opp.
Kadamba Bus stand, Vasco da Gama,
Goa,

.... Respondents

Mr. M. Pereira, Power of Attorney holder of the Petitioners.

Mr. J.J. Mulgaonkar, Advocate for Respondent No. 1(a).

Mr. M. Fernandes, Advocate for Respondent Nos. 3 and 4.

CORAM:- C.V. BHADANG, J.

DATE:- 1st APRIL, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. The learned Counsel for the respective respondents waive service. Heard finally, by consent of the parties.

2. By this petition, the petitioners/original plaintiffs are challenging the order dated 26.02.2016 below Exhibit 95-D

passed by the Adhoc Senior Civil Judge at Vasco in Regular Civil Suit No. 12/2010/A. By the impugned order, the application (Exhibit 95-D) for placing reliance on the documents as set out in paragraph 1, serial nos. (a) to (d) of the application has been refused.

3. The brief facts are that the petitioners had earlier sought eviction of the respondents by filing proceedings under the Goa, Daman and Diu Building (Lease, Rent and Eviction) Control Act, 1968 (the Rent Control Act, for short), in which the respondents had raised an objection that the subject building of which the suit premises form part, were not more than 15 years old and as such, the proceedings before the Rent Controller, were not competent. Subsequently, the petitioners filed Regular Civil Suit No. 12/2010/A for eviction before the Civil Court. Undisputedly, the petitioners are yet to lead their evidence in the suit. On 09.12.2015, the petitioners filed an application (Exhibit 95-D), seeking to place reliance on the following documents:

- (a) Occupancy Certificate dated 01.10.1992.
- (b) Municipal License 09.10.1990.
- (c) Municipal Renewal License 30.09.1991 and
- (d) Certified xerox copy of application dated

20.08.2003, application dated 10.10.2003, affidavit dated 19.08.2003 filed in Miscellaneous Application No. 256/2003/STAY/EVIC(MISC) No. 255/03/(LEAVE) before the Administrative Tribunal, Panaji.

4. It was contended that the document at serial no. (a) is an occupancy certificate, while the documents at serial no. (b) and (c) are in respect of the municipal license and renewal thereof. These three documents were obtained from the Municipal Council under the Right to Information Act. Insofar as the documents at serial no. (d) are concerned, it was contended that these documents were produced by the defendants before the Administrative Tribunal in the proceedings arising out of Rent Control case. It was contended that out of inadvertence the petitioners did not rely upon these documents earlier. It was contended that the documents would be material to decide the issues involved. It was therefore prayed that the documents at serial nos. (a) to (d) be allowed to be produced as they were documents either of the respondents or being public documents.

5. The application was opposed on behalf of the respondents.

6. The learned trial Court by the impugned order found that the occupancy certificate is not in respect of the first floor of the building, which is the subject matter of the suit. Insofar as the rest of the documents are concerned, the learned trial Court found that they are not relevant for deciding the real controversy between the parties.

7. It is submitted on behalf of the petitioners that the documents were relevant to show the age of the building. It is submitted that the relevant question would be about the age of the building including the first floor. It is submitted that the application for amendment, incorporating certain paragraphs, based on the aforesaid documents is allowed on the same day.

8. The learned Counsel for the respondent nos. 1 and 2 pointed out that the learned trial Court has rightly come to the conclusion that the documents are not relevant for deciding the real controversy in the suit.

9. The learned Counsel for respondent nos. 3 and 4 also supports the impugned order.

10. I have considered the rival circumstances and the submissions made. Undisputedly the application for amendment incorporating certain paragraphs based on the aforesaid documents has been allowed. The question would be about the age of the building, of which the first floor forms part. The documents at serial no. (d) are the documents which pertain to the defendants in respect of the proceedings before the Administrative Tribunal arising out of the Rent Control case. On overall consideration of the matter, I find that the petitioners have merely sought to place reliance on the documents at this stage. The question of relevancy and the admissibility of the documents can always be contested by the respondents and considered by the trial Court at the hearing of the suit. As noticed earlier, the petitioners are yet to lead their evidence and the respondents would get the opportunity to contest the suit on all the available grounds.

11. In such circumstances, the following order is passed:

ORDER

- (a) The petition is allowed.
- (b) The impugned order dated 26.02.2016 is hereby set aside.
- (c) The application (Exhibit 95-D) is allowed as prayed.
- (d) Needless to mention that all the rival contentions of the parties in relation to the documents are expressly kept open.
- (e) Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.

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