IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 421 OF 2016

EL SHADDAI CHARITABLE TRUST, REP HEREIN BY ITS CONSTITUTED POA, MR. GODFREY MACHADO AND ANR., ... Petitioners

Versus

MR. SANTOSH LOBO AND 8 ORS. ... Respondent

Mr. Parag S Rao, Advocate for the Petitioners.

Mr. J. Vaz, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.
Date:- 2nd May, 2016

ORAL ORDER:

By this petition, the petitioners, who are original defendants no.8 and 9 are challenging the orders dated 14/3/2016 and 12/4/2016 passed by the learned Adhoc District Judge, Mapusa, Goa in Civil Suit No.1/2012.

2. The brief facts are that the respondent nos. 1 and 2 had filed the aforesaid suit for declaration and mandatory and probative injunction in respect of a property better known as "Aradichem Abta" situated at Gaunsavaddo, Mapusa, Bardez-Goa. The suit was initially filed against the

respondent nos.3 to 6. It appears that the respondent nos. 7 to 9 were added subsequently by way of an amendment. It was contended that after the filing of the suit, the respondent nos. 5 to 6 have executed sale deed dated 25/6/2007 in favour of the present petitioners. The suit initially filed was for correction of survey record. Be that as it may, during the course of deposition of respondent no.1 i.e original plaintiff no.1, the respondents sought to produce in all four documents, namely, the certificate issued by the Comunidade of Mapusa dated 1/11/1937, three sale deeds dated 1/8/1977, 16/8/1977 and 31/8/1977 and a Gift Deed dated 29/8//1905, which the trial Court has allowed to be taken on record and have been exhibited by which the certificate by the Communidade and the three sale deeds are taken on record and are exhibited. Feeling aggrieved by the order, the petitioners are before this Court.

3. I have heard Mr. Rao, the learned counsel for the petitioner and Mr. Vaz, the learned counsel for the contesting respondent nos. 1 and 2. With the assistance of the learned counsel, I have perused record and the impugned orders.

4. At the out set, it is necessary to mention that the petitioners have no objection for exhibiting the Gift Deed and there is no challenge for the exhibition of the same. Thus the only issue which survives is regarding the

certificate dated 1/11/1937 and the three sale deeds of the year 1977.

5. It is submitted by Mr. Rao, the learned counsel for the petitioners that neither the certificate nor the sale deeds are public documents within the meaning of section 74 of the Indian Evidence Act, 1872. It is submitted that the first and the second respondents have produced notarized copy of the three sale deeds and the certificate which is not permissible and particularly, in the absence of compliance with sections 65, 66 and 67 of the Evidence Act. He, therefore, submits that the impugned order, which does not set out appropriate reasons, while dealing with the objection raised on behalf of the petitioners, deserves to be set aside.

6. On the contrary it is pointed out by Mr. Vaz the learned counsel for the respondents, that the original certificate dated 1/11/1937 along with its true translation has been produced on record. In so far as the three sale deeds are concerned, the learned counsel placed reliance on section 65 (f) of the Evidence Act in order to submit that under law the certified copy of the said document is permitted to be issued. He submits that the original certified copy was with witness during recording of his deposition and that a notarized copy was produced on record, which has been exhibited.

7. The learned counsel for the petitioners points out that in so far as the sale deeds are concerned, it is not recorded by the learned trial Court that the original certified copy was with the witness during recording of the deposition.

8. I have considered the circumstances and the submissions made. In so far as the certificate dated 1/11/1937 is concerned, a perusal of the order dated 12/4/2016 shows that the original certificate along with its xerox and the translation were produced. That apart, the Trial Court has also recorded that the document is taken on record subject to proof. It can thus be seen that the original certificate is taken on record at Exhibit C-167 subject to its proof. This takes us to the three sale deeds. Indeed the order dated 12/4/2016 shows that the first and second respondents have produced a notarized copy of the three sale deeds of the year 1977. An objection was raised to the exhibition of the said documents stating that the deponent is not the author of the document and that the document is not a public document and that no foundation has been laid, to rely upon this document by way of secondary evidence. The Trial Court has found that the sale deeds have " a direct reference to defendant nos. 8 and 9. The trial Court has also found that the sale deeds are public documents, which may not strictly be correct. None the less section 65 (f) provides that the secondary evidence may be led when the original is a document of which a certified copy is permitted by the Evidence

Act, or by any other law in force in India, to be given in evidence. It further provides that in case of such a contingency a certified copy of the document, and no other kind of secondary evidence would be admissible. So the only question is whether the notarized copy of the original certified copy of the sale deed can be allowed to be produced.

At this stage, Mr. Vaz, the learned counsel for the petitioner, on instructions states that he will produce the original certified copies before the trial Court. The statement is accepted. The trial Court shall permit the original certified copies to be taken on record. This will obviously be subject to any just exceptions to their admissibility and proof and objection, as may be available in law, including any objection based on section 67 of the Evidence Act which shall be gone into at the final hearing of the suit. It is needless to mention that mere exhibition of any document does not tantamount to its proof. The relevancy, admissibility, proof and probative value of any document are distinct aspects, which can always be gone into and decided by the trial court, in accordance with law. Subject to this, no case of interference is made out in the impugned order, which is accordingly dismissed with no order as to costs.

C. V. BHADANG, J

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