

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.498 OF 2016.

Mr. Lawrence Christopher
Fernandes, Son of Christopher
Fernandes, Age 57 years,
Residing at H. 66,
Ward No. 7, Rajwaddo,
Alankar, Theater,
Mapusa, Bardez, Goa.

.....Petitioners.

Versus

1. Mrs. Meena Judith Pinto
e Tavora, Alias Mrs. Judy
Tavora, w/o Mr. Luis de
Noronha e Tavora,
Major of age, Housewife,
2. Mr. Luis de Noronha e Tavora,
Husband of Respondent no.1,
Major of age, Both Indian
National, And Resident of
Flat No. B-1, First Floor,
Akbarali, Karmali Building,
Altinho, Panaji, Goa.
3. Mr. Deepak Madholkar,
Major of age, Indian National,
Resident of Rauto vaddo,
(H. No. not known) Nagoa,
Arpora, Bardez, Goa.
4. Colonel Arjun Deva,
S/o late Shri Sindhu
Ram Kataria, Major of age,
service, Indian National,
Resident of 126/A Officers
Colony, Bambolim, Goa.

Deleted vide
order dated
2.12.16

.....Respondents.

Shri A. Moneteiro, Advocate for the petitioner.

Shri A. D'Silva, Advocate for the respondent nos.1 and 2.

CORAM : F.M. REIS, J.

DATE : 2nd December,2016.

ORAL JUDGMENT

At the request of Shri A. Monteiro, learned Counsel appearing for the petitioner, the respondent nos.3 and 4 are deleted at his own risk. Amendment to be carried out forthwith.

2. Heard Shri A. Monteiro, learned Counsel appearing for the petitioner and Shri A. D'Silva, learned Counsel appearing for the respondent nos.1 and 2.

3. Rule.

4. Heard forthwith with the consent of the learned Counsels. The learned Counsel appearing for the respondent nos.1 and 2 waives service.

5. A short point for consideration in the above Writ Petition is whether the learned Civil Judge, Junior Division,

Mapusa was justified to refuse leave to the petitioner to rely upon the construction plan license in respect of the permission granted to the petitioner to put up a building in the property belonging to the petitioner bearing Survey Nos.38/10 and 38/13A.

6. Shri A. Monteiro, learned Counsel appearing for the petitioner has submitted that the respondent nos.1 and 2 have filed a suit alleging that the petitioner has no right of access over the property belonging to the said respondents bearing Survey No.38/11 of Arpora Village. The learned Counsel further points out that during the cross examination of DW1 the respondents questioned the witness as to whether the petitioner was in possession of the construction license of his building. The petitioner replied that though he had obtained the construction license, he had a copy thereof in Bombay where he was residing. The learned Counsel thereafter made an application seeking leave of the Court to rely upon such documents. The learned Counsel further submits that the learned Judge by the impugned order has refused leave to the petitioner to rely upon such documents which would cause grave injustice to the petitioner,

as according to him, the documents sought to be relied are very much material to decide the real controversy in question. The learned Counsel further points out that the learned Judge has erroneously examined the validity or otherwise of such plan at this stage of the proceedings when such exercised had to be carried out at the time of appreciating the evidence on record. The learned Counsel, as such, points out that the impugned Order be quashed and set aside.

7. Shri A. D'Silva, learned Counsel for the respondents submits that the documents sought to be produced were with the petitioner at the time of the filing of the written statement and there is no justifiable reason stated in the application as to why such documents were not produced at the earlier stage. The learned Counsel further points out that merely showing an alleged access in the license would not by itself establish the existence of such access. The learned Counsel further submits that the learned Judge upon examining the plan has taken a view that such document is not relevant for the purpose of deciding the real controversy involved in the matter. The learned Counsel further submits that survey number is not

mentioned in the plan and according to him, there is no infirmity in the impugned order passed by the learned Trial Judge. The learned Counsel as such submits that the petition be rejected.

8. I have duly considered the submissions of the learned Counsel and I have also gone through the records.

9. The construction license sought to be produced is in answer to a question put to the petitioner/himself by the respondent when he was in the witness box.

10. In such circumstances, it is not open to the respondents to now dispute the relevancy or otherwise of such plan. In any event the exercise as to whether a document is relevant or not is a matter to be examined at the time of appreciation of the evidence on record. At this stage it is not open to the learned Judge to conclude that such document is irrelevant in terms of the Evidence Act.

11. In such circumstances, the exercise by the learned Judge in examining the relevancy of the document at this stage

cannot be accepted and as such the impugned order deserves to be quashed and set aside. Whether the contents of the plan in any manner bind the respondent or not is a matter which would have to be considered by the learned Judge on its own merits while disposing the suit on merits.

12. The fact that the plan is pertaining to the property belonging to the petitioner and that the alleged access claimed by the petitioner is reflected therein are matters referable to the matter in controversy in the suit.

13. In such circumstances, I find that the learned Judge has acted with material irregularities in refusing leave to the petitioner to rely upon such documents. Needless to say that the relevancy of such documents are matters to be considered after such documents are produced and contents thereof duly established by the petitioner in accordance with law.

14. However, in the peculiar facts and circumstances of the case, as there was delay in producing such documents, I find that such leave can be granted to the petitioner to produce the

documents in terms of the application dated 16.12.2015 subject to payment of costs of ₹5000/- (Rupees five thousand only) to the respondent nos.1 and 2. Needless to say that the respondents if so advised, are at liberty to lead evidence in answer to any such documents sought to be produced by the petitioner.

15. In view of the above, the impugned order dated 29.1.2016 is quashed and set aside. The petitioner is granted leave to produce documents in the application dated 16.12.2015 in the light of whatsoever stated herein above, subject to payment of costs of ₹5,000/-(Rupees five thousand only) as a condition precedent. The contention on the relevancy or veracity of contents thereof are left open. Rule is made absolute in the above terms.

F.M. REIS, J.

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