

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 491 OF 2015

- 1.Mr. Tome @ Thomas
Nolasco Isidoro de
Mendonca, s/o. late Mr.
Joao Paulo de Mendonca
and Mrs. Beatriz Isabel
Angelina Pinto @ Beatriz
Pinto.
- 1(a) Mrs. Elizabeth Fernandes,
widow, housewife,
- 1(b) Master Anderson Fernandes,
major of age,
Both of r/o Zoidar vaddo,
Nachionola, Bardez-Goa.
- 1(c) Mrs. Carmine Pereira,
major, married, housewife,
through her constituted
attorney Petitioner No.1(a)
- 1(d) Mr. Reginaldo Pereira,
major, married, husband of
Petitioner No. 1(c) above,
Both r/o Naigaon,
District Thane, Maharashtra.
through his constituted
attorney Petitioner No.1(a).
- 1(e) Mr. Francis Mendonca,
major, unmarried, service,
through his constituted
attorney Petitioner No.1(a).
- 1(f) Mr. Ignatius Mendonca,
major, unmarried, service,
both residents of Zoidar vaddo,

Nachionola, Bardez-Goa.
through his constituted
attorney Petitioner No.1(a).

2. Mrs. Aramita Carlota de
Souza @ Aramita Carlota
de Mendonca
widow of Petitioner No.1
above named.
3. Mrs. Maria Filomena
Rita de Mendonca @ Maria
Filomena Rita Fernandes,
d/o. late Joao Paulo de
Mendonca and Mrs.
Beatriz Isabel Angelina
Pinto @ Beatriz Pinto.
4. Mr. Pedro @ Peter
Paulo Francisco Lazaro
Fernandes, husband of
petitioner No. 3 above named,
All r/o Carona,
Aldona, Bardez-Goa.
- 4 e) Mrs. Myra Fernandes,
D/o Petitioner No. 4 above named,
38 years of age, in service
and married to;
- 4(f) Mr. Elroy Alan Bismark Ribeiro,
husband of Petitioner No. 4(e) above
named, 47 years of age, in service.
Both r/o Primos Park,
C 1 Flat No. G3, Corlim-Ilhas, Goa,
- 4(h) Mrs. Blossom Loretta Fernandes,
wife of petitioner No. 4(g) above
named, about 38 years of age,

housewife,
both r/o's House No. 1289,
Devereny, Carona,

.... Petitioners

V e r s u s

1. Mrs. Justina Preciosa
Lobo w/o. late Mr.
Eduardo Jose Francisco
Caridade Pedro Nolasco
Mendonca @ Caridade
Mendonca.
2. Mr. Joao Agnelo de
Mendonca, s/o. late
Caridade Mendonca
3. Mrs. Lorreta Alda
Mendonca,
4. Mr. John Cyril
Mendonca, s/o. late
Caridade Mendonca.
5. Mrs. Wilma Rose
Mendonca,
6. Miss Vilma Mendonca,
d/o. late Caridade Mendonca,
All r/o's Santarxette, Aldona,
Bardez-Goa.
7. Mrs. Molina Albuquerque,
major of age, housewife.
8. Mr. Caitaeno Rosario Bernard Albuquerque,
major of age, service,
Both r/o. House No. B10,
Birmottem, Bastora, Bardez-Goa.
9. Mrs. Marina Dores da Cunha,
major of age, service,

10. Mr. Antonio Francisco Xavier da Cunha
husband of defendant No. 9 above,
major of age, in service.
Both r/o House No. 212,
Chriconduddi, Vasco-da-Gama, Goa.
11. Mr. Diago Anthony Fernandes,
major of age, service.
12. Mrs. Maggie Luiza Mascarenhas,
major of age, service.
13. Mr. Roque Francisco Mascarenhas,
major in age, service.
Both r/o's Porvorim, Bardez-Goa. Respondents

Mr. N. Sardessai, Senior Advocate with Mr. V. Amonkar for the Petitioners.

Mr. M. B. Da Costa, Senior Advocate with Mr. G. Naik for the Respondents.

CORAM: S. B. SHUKRE, J.
DATE: 28TH JANUARY, 2016.

ORAL JUDGMENT:

Heard. Rule. Rule made returnable forthwith. Heard finally by consent.

2. The grievance is that the learned Senior Civil Judge while giving effect to the order passed by this Court on 19/11/2007 in Writ Petition no.81/2007, has not considered the valuation report in its proper prospective to ascertain

as to whether or not there were any improvements made in the suit house and if there were any improvements at all, what could have been their value in terms of money.

3. I have heard the learned Senior Counsel for the petitioners and learned Senior Counsel for the respondents.

4. After hearing them, it has been noticed that the valuation report, copy of which is at page 10 of the additional paper book, does not really make it clear as to which area of the suit house, whether area of 130 or area of 60 sq.mtrs., as sought to be contended by the learned Senior Counsel for the respondents, is improvement or addition made to the extended house. Therefore, a proper inquiry into the matter was necessary and it is seen from the impugned order that no such inquiry has been held by the learned Civil Judge to understand the purport and meaning of the valuation report dated 24/7/2014.

5. That apart, there was also one document dated 7/4/2012, as pointed out by the learned Senior Counsel for the petitioners, which showed that no permission for demolition or renovation nor any permission for reconstruction of House No.714, situated at Aldona was granted by the Panchayat/Town Planner, was considered by the Trial Court. Of course, the

learned Senior Counsel for the respondents submits that there is a document dated 7/12/1998 issued by the Town and Country Planning authority (page 8 of the additional paper book) purportedly signed by the Senior Town Planner, showing grant of permission for the proposed renovation, which establishes the fact that necessary permission was obtained by the respondent to make the renovation in the nature of construction of RCC slab by replacing roof of mangalore tiles. These aspects, have not been considered properly by the learned Civil Judge and would have to be considered appropriately as they would have a bearing upon the contentions raised by the respondents in their application dated 5/8/2004.

6. In the circumstances, I am of the view that this matter deserves to be sent back to the Trial Court for considering the application dated 5/8/2004 filed by the respondents in accordance with law. The Trial Court shall make necessary inquiry into the matter and after hearing both sides shall proceed to pass order in accordance with law. The inquiry shall be conducted on the basis of the documents and evidence already available on record and no fresh documents shall be permitted to be tendered in evidence. As eight witnesses appear to have already been examined there is no need for examination of any more witnesses. The inquiry is to be completed within 3 months from the date of the order.

7. Rule is made absolute in these terms. No costs.

S. B. SHUKRE, J.

Ap/-