

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 780 OF 2016

MR. DAMODAR SUBA PRABHU AND ANR. ... Petitioner
Versus
MR. GHANASHYAM V. PAI AND ANR. ... Respondent

Shri Prasheen Lotlikar, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 12th August, 2016

ORAL ORDER :

Heard learned Counsel for the petitioners for sometime.

2. The learned Counsel for the petitioners, on instructions, states that he is not pressing for deletion of issue nos.2 & 5. He restricts his prayer for deletion of issue no.1 which reads thus:

Whether the plaintiffs prove that they are owners of the suit premises ?

3. A perusal of the plaint would show that in para 2 of the plaint the petitioners have averred that they are owners of the suit property, which is denied by the defendants in para 26 of the written statement.

The learned Counsel for the petitioners, points out that the denial in para 26 is an invasive denial, which cannot be acted upon. In other words, it is submitted that in the absence of any specific denial of the ownership of the petitioners, the issue no.1 is required to be deleted.

It is also submitted that respondents admit that they were put in possession under agreement dated 15/04/2002 and this would also suggest that they are not disputing the ownership.

4. I have considered the circumstances and the submissions made. An issue arises when a material proposition of fact asserted by one party is denied by the adversary. At the stage of framing of issue, the Court is not expected to examine the merits of the pleadings. It appears that the petitioners had asserted that they are owners and in para 26 of the written statement, the same is specifically denied. In such circumstances, I do not find that any case for deletion of the issue is made out.

5. The petition is thus without any merit and is accordingly rejected.

C. V. BHADANG, J.

NH