

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.748 of 2015**

Jayshree Datta Malik
Age 85 years, Occ. Household
R/at House No.75, Sita Sadan
Shivaji Park, Mumbai 400 028
Through her Attorney
Mrs. Neelam Vinay Parelkar
Residing at House No.75,
Sita Sadan, Shivaji Park,
Mumbai 400 028

.. Petitioner

Versus

1. Ana Herminia Quardroas Pereira
Age 65 years, Occ. Household
Residing at House No. Not known
Cupids Heaven, Arlem, Raja
Salcete, Margao, Goa.

2. Manuelino Fernandes
Age 66 years, Occ. Not known
Residing at House No. Not known
Cupids Heaven, Arlem, Raja
Salcete, Margao, Goa.]

3. Hema Milind Arsekar
Age 61 years, Occ. Business
Residing at House No. Not known
Maynard Apartment, Block No.C
M.R. 3, Near Maria Hall
Benaullim, Margao-Goa

.. Respondents

Ms. Varsha Pallav and Mr. I. Santiman, Advocates for the petitioner.

Mr. K. Padgaonkar, Advocate for the respondent no.3.

CORAM :- S. B. SHUKRE, J.

DATE : 24th February, 2016

ORAL JUDGMENT :

Rule. Rule, made returnable forthwith. Heard finally.

2. By the order passed by this Court on 08/10/2015, a notice was issued to the respondents and it was the notice for final disposal of the writ petition. As per the endorsement made in the rojnama of this petition on 29/01/2016, it is seen that service upon respondent nos.1 and 2 has been completed. On 12/02/2016, when this writ petition was on board of matters listed for admission and/or disposal at admission stage, the respondent no.3 was present through his learned Senior Counsel and made a statement that he had no role to play in the matter and, therefore, no submission would be made by him. On that date, the respondent nos.1 and 2, however, were absent, though duly served and this fact was noted by this Court by passing an order on that date. A further opportunity was given to the respondent nos.1 and 2 and that is how, this matter has been listed today for disposal at admission stage.

3. I have heard learned Counsel for the petitioner. Respondent no.3 has already stated that he would not be making any submission in the matter. Respondent nos.1 and 2 are once

again absent. Sufficient opportunity has been given to them. But, same has not been availed of by these respondents. In the circumstances, this Court is now proceeding in the matter after hearing the arguments of learned Counsel for the petitioner and considering the paper book of the writ petition.

4. Upon perusal of the impugned order dated 03/08/2015, I find that learned Civil Judge, Senior Division has completely misconstrued the ratio of the case of **Vencu Gopal Tari and others Vs. Nilconta S. Xete and others**; AIR 1975 (Goa, Daman and Diu) 32 when he observed that an official gazette, being a public document, which is attached with a presumptive value under Section 81 of Indian Evidence Act, can be produced on record through a witness of the plaintiff even though the official gazette is sought to be relied upon by the defendant. In other words, the learned Civil Judge has granted liberty to the defendants i.e. defendant nos.1 and 2 i.e. respondent nos.1 and 2 herein to produce some document by which they are placing reliance through one of the witnesses of the petitioner-plaintiff. A bare perusal of the said judgment, however, does not reveal that such principle of law has been stated therein. What has been laid down in this judgment is that the act of marking a document under Order XIII, Rule 4 of Code of Civil Procedure is

the job of the Court and no formal tendering of a document, which is a public document, by or through a witness is necessary under the Evidence Act or any of the provisions of the Code of Civil Procedure. It has not been said in this judgment that a defendant placing reliance upon one document can insist of production of that document through a witness of other side. A document having presumptive value under Section 81 of the Evidence Act need not be necessarily produced through the formal testimony of a witness. But that does not mean that a public document can be foisted upon the witness of the other side against his will. A document, which is a public document and which comes with presumption under Section 81 can be admitted in evidence only because it carries mandatory presumptive value under Section 81 of the Evidence Act and this can be done by the party seeking to place reliance upon it through its formal production upon the record of the case with necessary leave obtained from the Court. Then, there would also be a question of allowing such a party to place reliance upon that document in a case where there are no pleadings made in this behalf by that party. In this case, it is the contention of learned Counsel for the petitioner that there are no pleadings made in the written statement filed on behalf of the respondent nos.1 and 2 that the price of land was inadequate and the agreement of sale in question did not reflect correct price of

land and, therefore, it was necessary that the correct price of land was brought on record through some public document. This aspect of the matter also has been completely ignored by the learned Civil Judge, Senior Division.

5. In the circumstances, the order impugned herein cannot stand the scrutiny of law. It has been passed in breach of settled principles of law and, therefore, it deserves to be quashed and set aside.

6. Hence, the writ petition is allowed. The impugned order dated 03/08/2015 is quashed and set aside. Liberty is granted to the respondent nos.1 and 2 to produce the public document in question in accordance with law and if necessary, after making an application seeking leave of the Court in that regard. If such an application is filed, same shall be dealt with in accordance with law.

7. Rule is made absolute in this terms.

S. B. SHUKRE, J.

SMA