

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 723 OF 2015.**

Shri Suraj Tulshidas Naik
S/o Shri. Tulshidas Naik
Major of age, married, business
R/o H. No. 418/4
Ganemorod, Xeldem
Quepem, Goa.

..... Petitioner

Versus

1. Smt. Chandar Barkelo Fadte
W/o. late Shri Barkelo Fadte
Major, agriculturist.
2. Shri. Pandurang Jaiwant Fadte
S/o. late Shri Jaiwant Fadte
Major, married, agriculturist.
3. Smt. Shantabai P. Fadte
W/o. Shri Pandurang Jaiwant
Major, married, agriculturist
4. Shri. Tukaram J. Fadte
S/o. late Shri Jaiwant Fadte
Major, married, agriculturist.
5. Smt. Kamlavati Tukaram Fadte
W/o. Tukaram J. Fadte
Major, married, agriculturist.

All r/o. Odar, Quepem Taluka,
Curchorem, Goa.

6. Shri. Sebastiao Fernandes
S/o. Shri. Tiburcio Fernandes
Major, married,
r/o. Odar, Quepem Taluka,
Curchorem, Goa.

7. Shri John Fernandes
S/o. Caitan Tipus Fernandes
Major, married
R/o. Odar, Quepem Taluka
Curchorem, Goa.

... Respondents.

Mr. Shivan Desai, Advocate for the Petitioner.

Mr. C. A. Coutinho, Advocate for the Respondent nos. 1 to 5.

Coram:- C. V. BHADANG, J.

Date:- 25th April, 2016.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Learned Counsel for the Respondents waives service. Heard finally by consent of the parties.

2. Heard Shri Desai, learned Counsel for the Petitioner and Shri Coutinho, learned Counsel for the Respondent nos. 1 to 5, who are the original Plaintiffs and the only contesting Respondents. The service of notice to Respondents no. 6 and 7, who are original defendants no. 2 and 3 is dispensed with.

3. The Petitioner, who is the original Defendant no. 1, filed an application for production of additional documents being Application Exhibit 104-D. Thereby, the Petitioner sought to produce a CD of photographs which were clicked on 03.10.2007 by a professional

photographer namely Eknath Uttam Khedekar and a certificate dated 09.03.2015 issued by Rucha Photo Studio. The Trial Court found that the Petitioner had filed a list of documents on 25.02.2009 and as the CD was generated on 30.06.2008, which was prior to the filing of the list of documents, the Petitioner had "ample opportunity to enlist the said CD in the list of documents". The learned Trial Court has also found that, prima facie, the CD was secondary device used for storage and the memory card of the digital camera which was used for taking the photographs would be the primary evidence. The Trial Court has also observed that the certificate dated 09.03.2015 of the photographer does not clarify whether it was on the same day that the CD was generated using the memory card.

4. On hearing the learned Counsel for the parties, I find that by the application Exhibit104-D, the Petitioner had only sought production of the documents. The question of their proof and the probative value can be gone into at the trial. At the stage of production of the document, the probative value of the same could not have been gone into. In that view of the matter, the following Order is passed :

ORDER

- (i) The Petition is allowed. The impugned Order is hereby set aside.

The application exhibit 104-D is allowed.

- (ii) It is made clear that the production will be subject to proof in accordance with law.
- (iii) The Trial Court shall consider the question of proof and probative value of the documents at the appropriate stage.
- (iv) All rival contentions are left open.

C. V. BHADANG, J.

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