

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 749 OF 2015

1. Smt. Maria Cristina Dias, Daughter of
late Joao Dias, Indian National, r/o
House No. 32, Cotto Amona,
Quepem, Goa. Petitioner

Versus

1. Shri Johny Joao Cardoza, Aged about
44 years, son of Joao Xavier Cardozo,
Married, businessman, resident of
House No. 50, Cotto Amona,
Quepem, Goa.
2. Mr. Constancio P.S. Dias, aged about
80 years, son of Joao Dias and his
wife;
3. Mrs. Rose Dia, aged about 66 years,
Both resident of House No. 32/B,
Champeabhat, Cotto Amona,
Quepem, Goa. Respondents

Mr. Jagannath J. Mulgaonkar, Advocate for the Petitioner.

Mr. Ashwin D. Bhobe, Advocate for Respondent No. 1.

CORAM:- S.B. SHUKRE, J.

DATE:- 2nd FEBRUARY, 2016.

ORAL JUDGMENT:

Heard. Rule. Rule made returnable forthwith. Heard
finally by consent of the parties. None appears for respondent

nos. 2 and 3.

2. The grievance is that an application filed for grant of permission to lead secondary evidence has been rejected on grounds not at all germane to exercise of jurisdiction under Section 65 of the Indian evidence Act.

3. On perusal of the impugned order, I find that the grievance is justified. Therefore, it would be in the interest of justice that the impugned order is quashed and set aside and the matter is sent back to the Court of Adhoc District Judge-1 for considering the application afresh in accordance with law.

4. In such circumstances, the petition is allowed. The impugned order is quashed and set aside. The matter is sent back to the learned Adhoc District Judge-1, South Goa, Margao for considering the application dated 19.03.2015 (Exhibit-18) afresh, in accordance with law after giving sufficient opportunity to the rival parties of being heard. All contentions of both sides are kept open, including objection raised by respondent no. 1 relating to the procedure to be followed in such matters, which shall be decided on their merits.

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

S. B. SHUKRE, J.

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