

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 885 OF 2015

Comunidade of Quepem,
Represented by its Attorney
Shri Sandeep Phal Dessai,
46 years of age,
Son of Shri Guiramji Phal Dessai,
Residing at H. No.86/2, Dessaiwada,
Quepem, Goa.

..... Petitioner

V e r s u s

1. Shri Agnelo Furtado,
Major of age,
S/o Kristovam Furtado,
R/o. H. No. 328,
Dandewada, Chinchwada, Goa.
2. Shri Krishnakant Gangadhar Agarwal,
Major of age,
S/o. Shri Gangadhar Agrwal.,
R/O H. No. 63/A,
Station Road, above Shahi Darbar Restaurant,
Margao, Goa.
3. Shri Ashok S. Naik,
Major of age, S/O S. Naik,
Ashok Earthmovers & Transport Contractors,
R/o. Venkatesh Chamber, Building "B",
Flat No.SF/1, Shivaji Chowk,
Kakoda, Curchorem, Goa.

..... Respondents

Mr. A. D. Bhole, Advocate for the Petitioner.

CORAM: S. B. SHUKRE, J.
DATE: 25TH JANUARY, 2016.

O R D E R :

Heard learned counsel for the petitioner. None for the respondents though sufficient opportunity has been given to them for making their submissions in the matter.

2. Considering the fact that the petitioner, which is the plaintiff, is a Comunidade and thus a Body of persons which would be dependent on its attorney or witnesses to effectively prosecute the suit before the Court, it is quite possible, as rightly submitted by learned counsel for the petitioner, that the witnesses of Comunidade may at times not remain present before the Court and thus may contribute to delay. It is desirable that plaintiff like the present petitioner, being a body of persons, is required to be given a little more leeway in such matters. Besides, the suit has been filed for taking action against the persons who have been alleged to be encroachers on the property claimed to be belonging to the Comunidade. In such a case, the interest of justice would require that the procedural mechanics of the provisions of Code of Civil Procedure are operated in such a manner that the truth is ascertained and the controversy is set at rest finally. If procedural provisions are not applied in this manner in this case, there is a possibility of multiplicity of proceedings which would defeat the very object of passing of the order closing the evidence of the plaintiff/petitioner.

3. It also appears from the perusal of the application of the petitioner (page 43) that by making an endorsement thereon, learned counsel for respondent no.1 did not take any objection to the grant of the adjournment. Even if there is inconvenience to the defendant's side, same can be compensated by imposition of appropriate costs payable to the contesting defendants. Only contesting defendants, as informed by the learned counsel for the petitioner, are respondent nos.1 and 2.

4. In this view of the matter, the writ petition is allowed. The impugned order is quashed and set aside. The petitioner shall pay costs of Rs.300/- (Rupees three hundred only) each to the respondent nos.1 and 2 directly or by depositing in Trial Court within two weeks from the date of the order. The suit shall proceed from the stage at which the impugned order was passed and the petitioner shall be allowed to lead evidence in accordance with law. Petitioner shall appear before the Trial Court on 15/2/2016 at 10 a.m. together with its witnesses. Petitioner shall not seek any adjournment on that date except for compelling reasons, and shall abide by this order.

5. Writ petition is disposed of accordingly.

S. B. SHUKRE, J.

Ap/-