

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1056 OF 2016

Comunidade of Quepem,
Represented by its Attorney,
Shri Vivek K. Fal Dessai,
42 years of age,
Son of Shri Krishna Fal Dessai,
Residing at H. No. 89,
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, Chinchinim,
Goa.
2. Shri Krishnakant Gangadhar Agarwal
Major of age,
S/o. Shri Gangadhar Agarwal
r/o. H. no. 63/A,
Station Road, above Shahi Darbar Restaurant,
Margao, Goa.
3. Shri Ashok S. Naik,
Major in 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. Ashwin D. Bhobe and Ms. S. Bhobe, Advocate for the Petitioners.

Mr. Joseph Vaz, Advocate for the Respondent no. 1.

Coram :- **F. M. REIS, J**

Date : **5th December, 2016**

ORAL JUDGMENT

Heard Mr. A. D. Bhobe, learned appearing for the Petitioners and Mr. Joseph Vaz, learned Counsel appearing for the Respondent no. 1.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondent no. 1 waives service.

3. Upon hearing the learned Counsel appearing for the Petitioners and Respondent no. 1, the short point for consideration is whether the learned Judge was justified to pass the impugned Order dated 15.02.2016 closing the evidence of the Petitioner and the subsequent Order dated 15.09.2016 dismissing the Review Petition filed by the Petitioners.

4. Mr. A. D. Bhobe, learned Counsel appearing for the Petitioners, submits that as on the earlier occasion the evidence of the Petitioners was closed, the Petitioners approached this Court in a Writ Petition which came to be disposed of by a Judgment dated 25.01.2016 whereby the Petitioners were given an opportunity to proceed with the evidence of the Petitioners on 15.02.2016. Learned Counsel further pointed out that during such interregnum, a new Attorney was appointed for the Petitioner-Communidade which forced the Petitioners to file an application to differ the hearing on the said date as the new Attorney would have to depose on behalf of the Petitioners. Learned Counsel further pointed out that on the basis of the said Judgment of this Court which recorded that no adjournment should be granted to the Petitioners on the said date unless for compelling reasons

the learned Judge dismissed the application for adjournment and proceeded to close the evidence of the Petitioners. Learned Counsel further pointed out that as there were compelling reasons which forced the Petitioners to seek an adjournment on the said date, the learned Judge was not justified to pass the impugned Order closing the evidence of the Petitioners. Learned Counsel further submits that even the Review Application filed by the Petitioners was rejected essentially considering the conduct of the Petitioners prior to the disposal of the Writ Petition filed by the Petitioners. Learned Counsel further submits that the dispute in the suit is of a substantial portion of the property belonging to the Petitioners and, as such, grave injustice would occasion to the Petitioners in case the impugned Order is allowed to stand.

5. On the other hand, Shri Vaz, learned Counsel appearing for the Respondent no. 1, submits that the Petitioners have been successfully taking adjournment and, as such, the discretion exercised by the learned Judge does not call for interference of this Court under Article 227 of the Constitution of India. Learned Counsel has taken me through the Order passed whilst disposing of the Review Petition dated 15.02.2016 to point out that the learned Judge has rightly recorded the conduct of the Petitioners which disentitles the Petitioners to get an adjournment on the subject date. Learned Counsel as such submits that the Petition be accordingly rejected.

6. I have duly considered the submissions of the learned Counsel. I have also gone through the records. It cannot be disputed that a party cannot seek successive adjournments on untenable grounds. This Court whilst passing the

Judgment dated 25.01.2016 had observed that no adjournment should be granted on the date fixed for further evidence of the Petitioner i.e. 15.02.2016 unless for compelling reasons. The fact that a new Attorney was appointed during the interregnum is not in dispute. In terms of the statute, the Attorney has to depose on behalf of the Petitioner-Comunidade. In such circumstances, I find that there were compelling reasons to seek an adjournment on the said date. But, however, considering that the Petitioner has been delaying the disposal of the suit on some ground or the other and taking note of the costs which were awarded on the earlier occasion, I find that the Petitioners should be permitted to lead further evidence subject to paying costs to the Respondent no. 1 which is fixed at Rs.5,000/- as condition precedent.

7. In view of the above, I pass the following :

ORDER

(i) The impugned Order dated 15.02.2016 and 15.09.2016 are quashed and set aside.

(ii) The Petitioner shall be permitted to proceed to lead their evidence on the date fixed by the learned Judge subject to payment of Rs.5000/- to the Respondent nos. 1 and 2 as condition precedent.

(iii) The parties are directed to appear before the learned Judge on 09.01.2017 for appearance of parties and abide by further directions of the learned Judge.

- (iv) Rule is made absolute in the above terms.

F .M. REIS, J.

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