

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 250 OF 2017**

Shri Abhay Ramchandra Naik Ganthe,
of major age, Indian National,
resident of House no.398,
Dhakte Bhat,
Dongri, Tiswadi-Goa.
(Registered Address)

.... Petitioner

V e r s u s

Smt. Jaymala alias Mitila Mahesh Naik,
of major age,
Indian National, resident of
House No.406, Dhakte Bhat,
Dongri, Tiswadi-Goa.
(Registered Address)

..... Respondent

Mr. Rohit Bras De Sa, Advocate for the Petitioner.
Mr. Arjun F. Naik, Advocate for Respondent.

Coram:- C. V. BHADANG, J.

Date:- 19th July, 2017.

ORAL JUDGMENT:

Rule, made returnable forthwith. The learned counsel for the respondent waives service. Heard finally by consent of parties.

2. The challenge in this petition is to the order dated 3/11/2016 (Below Exhibit 32) passed by the learned Civil Judge Junior Division at Panaji in Regular Civil Suit No.70/14/C. By the impugned order, application filed by the petitioner for permission to lead secondary evidence has been rejected.

3. The petitioner has filed the aforesaid suit for mandatory injunction for removal of encroachment and for prohibitory injunction. The petitioner is relying upon a letter/agreement dated 17/1/1974 which was executed by the father of the petitioner in favour of one Laximi Naik who is the predecessor in title of the respondent. By the said letter, the father of the petitioner, namely, Ramchandra Naik had purportedly sold 100 sq.mtrs of land from out of matríz no.251 to Laxmi Naik. It is the said land which forms the subject matter of the dispute.

4. It appears that the petitioner has served a notice under section 66 of the Indian Evidence Act on the respondent to produce the said original document. That notice is dated 29/8/2015. Admittedly, the respondent has neither replied the said notice nor produced the said document. It is in these circumstances that the petitioner filed application (Exhibit 32) for leave to lead secondary evidence of the said document dated 17/1/1974. The petitioner wants to produce a photo copy of the said document.

5. The respondent filed a reply and opposed the application denying the authenticity of the document.

6. The learned trial court by the impugned order has rejected the application inter alia on the ground that the petitioner has not mentioned as to how the defendant came in possession of the said document and the petitioner has not complied with the provisions of section 65 of the Indian evidence Act.

7. I have heard Shri De Sa, the learned counsel for the petitioner and Shri Naik, the learned counsel for the respondent. With the assistance of the learned counsel I have gone through the record and the impugned order passed.

8. It is a matter of record that the petitioner has served a notice on the respondent to produce the said document to which neither reply is issued nor the document is produced by the respondent. Admittedly, Laxmi Naik is the predecessor in title of the respondent. It is further a matter of record that in an application for declaration and registration as mundkar, filed by the respondent, before the learned Mamlatdar, the respondent has referred to the said document by which 100 sq.mtrs of land is sold to Laxmi Naik. The respondent is opposing the application for leave to produce secondary evidence inter alia on the ground that the document is not genuine and is inadmissible in evidence.

9. In my considered view, once the petitioner has issued a notice to the respondent to produce the document to which the respondent has not issued any reply nor has produced the document and further having regard to the fact that the respondent has referred to the said document in the proceedings before the Mamlatdar and also having regard to the fact that the copy which is sought to be produced is a photo copy of the document, leave to lead secondary evidence can be granted keeping the issue of genuineness, proof admissibility and probative value of the document being left open to be gone into by the learned trial court.

10. In the result the petition is allowed. The impugned order is set aside. The application at (Exhibit 32) is hereby allowed subject to the genuineness, admissibility proof and the probative value, to be attached to the said document being left open. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

ap/-