IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 126 OF 2017

1. Shri Raghuvir Barkelo Gaonkar,
   65 years of age, married, agriculturist,

2. Shri Gajanan Barkelo Gaonkar,
   63 years,agriculturist, married,
   Both residents of House No.65,
   Gowalwada, Nirnakal,
   Ponda, Goa. …. Petitioners

V e r s u s

1. Ganapt Vasu Gaonkar,
   about 75 years old, household,
2. Savlo Vasu Gaonkar,
   Since deceased, through his legal
   representatives and 16 others. …. Respondents.

Shri S. D. Padiyar, Advocate for the Petitioners.
Shri I. Agha, Advocate for the Respondent nos.14(a,b,f & g), 15, POA 16 to 18.

CORAM: C. V. BHADANG, J.
DATE: 21ST AUGUST, 2017.

ORAL ORDER:

The challenge in this petition is to the order dated 23/12/2016, whereby the petitioner's application (Exhibit 140/D) for production of a Gift Deed and some receipts has been rejected. The petitioners have filed a suit against the respondents for permanent injunction restraining the respondent nos.14 to 18 (the defendants no.14 to 18) from cutting any trees in the suit property and for declaration that the respondent nos.14 to 18 have no right, title or interest in the suit property. In the plaint, para no.2 the plaintiffs have described the land which is subject matter of dispute which is known as "Gonvol Vadevoril Raim" situated at Nirnakal bearing old cadastral survey no.55 and registered in the Land Registration Office of Ilhas Goa under no.7726 of Book B (new) 20 at page, 158 V admeasuring 19,3026 Ha. According to the petitioners in the cadastral survey plan, the said property is shown in the name of one Zonum Omun Gancar, Omum Vassu Gancar, Ezvonta Budo Gancar, Govinda Putu Gancar, Panduronga Puttu Gancar, Quema Tolly Gancar and Purxotoma Narana Patel. According to the plaintiffs the surname "Gancar" and "Gaonkar" is one and the same and the ancestors of the plaintiff used the surname Gancar. In the survey conducted under the Land revenue Code, the suit property bears several survey numbers, with different names, as set out in paragraphs 4 and 5 of the plaint.

2. On behalf of the petitioners, one Gajanan Gaonkar was examined and was cross examined on behalf of the respondents. It is at this stage that the petitioners filed an application on 18/11/2016 (Exhibit 140/D) purportedly under Order 7 Rule 14 r/w section 151 of Code of Civil Procedure, 1908 (Code for short). It was contended that the advocate for the petitioners came across a reference to some documents in writing made by

P.W1 in his cross examination (at page 40), in which it was stated that the late father of the plaintiffs had given permission for construction of a flour mill as well as a society and the advocate for the petitioners upon verification of the same from P.W.1 came to know that such writing in the form of a Gift Deed was given by the father of the plaintiffs. Accordingly, the said fact was checked with the society i.e. Nirankal Vividh Karekari Seva Sahakari Saunstha, Conxem Nirankal and the society gave a notarized copy of the Gift Deed pertaining to an area admeasuring 476 sq.mtrs from out of the suit property at Gawalwada, Nirankal,Ponda, Goa. According to the petitioners, the Gift Deed has been signed by the late father of the plaintiffs, Kashinath Vasu Gaonkar, father of defendant no.13 and Ganesh Bhiku Gaonkar, father of defendant no.12. In the said document Toli Khemu Gaonkar has affixed his thumb impression as a witness. According to the petitioners the said document has a direct bearing on the subject matter of the suit and is relevant for deciding the controversy in the suit.

3. It was next contended that P.W1 was having some receipts of sale produce of cashew nuts from the said property for certain years from 1993 to 2016 and these receipts are also relevant for deciding the controversy in the suit. It was in these circumstances that the petitioners sought production of the Gift Deed and the receipts as aforesaid.

4. The application was opposed by the contesting respondent nos.14 to 18. The other respondents gave no objection for production of the documents. It was contended by the respondent nos.14 to 18 that the documents have no connection with the suit property. The Gift Deed does not pertain to the suit property, nor the receipts are in respect of sale of cashew nuts produced from the suit property. The petitioners have failed to produce the documents since the year 2010.

5. The learned trial court found that there are no pleadings in the plaint as far as the receipts which were sought to be produced are concerned. It was found that the property in the alleged Gift Deed is shown as "Gawalmal" and no such property is shown to be subject matter of dispute in the plaint. The learned trial court refused to accept that the property described as 'Govalwado' and 'Gawalmal' are the same. The learned trial Court further took note of the fact that the suit was at the stage of defence evidence. The witness for the petitioners i.e P.W1 was examined, was recalled and re-examined on 17/9/2016 and looking to the stage, the application could not be granted.

6. I have heard Shri Padiyar, the learned counsel for the petitioners

and Shri Agha, the learned counsel for the contesting respondents. Perused the record.

7. On behalf of the petitioners reliance is placed on the decision of this Court in the case of **Bank of India, Goa Vs. Noronha Dais Enterprises** dated 13/4/1995 in order to submit that the prayer for production of documents in the present case would be governed by the provisions of Order 7 Rule 18 (2) of C.P.C to which the provisions of Rule 14 and Rule 18(1) of Order 7 of the Code, do not apply. In other words, it is submitted that the documents were sought to be produced in pursuance of certain question put in the cross examination and the answers given by P.W1 in response thereto. It is submitted that a document in order to rebut the plea raised by the defendant can be produced without the leave of the Court and as of right.

8. On the contrary it is submitted by the learned counsel for the respondents that the Gift Deed is not shown to be pertaining to any property which is subject matter of dispute nor the receipts pertain to the sale of cashew nuts produced from the suit property and thus have rightly been found to be not relevant.

9. I have carefully considered the rival circumstances and the

submissions made and I do not find that any case for interference is made out.

10. At the outset it may be mentioned that the trial court has found and to my mind rightly so that the identity of the property in the Gift Deed and the properties which are subject matter of dispute as listed in the plaint has not been established. The property which is subject matter of dispute is said to be a vast piece of land admeasuring 193026 Ha., while the subject matter of the Gift Deed is an area admeasuring 476 sq.mtrs, better known as "Gaulamel". In the cross examination P.W1 has stated that there was a document of consent, while the document which is sought to be produced is a Gift Deed. In so far as the receipts are concerned, there is no pleading in the plaint that the cashew nuts produced from the suit property were sold to Goa Bagayatdar Sahakari Kharedi Vikri Saunstha Maryadit, Ponda, Goa. Thus the trial court has rightly found that the documents have not been shown to be relevant. In the case of **Bank of India, Goa (supra)** on facts it was found that on account of certain questions put by the defendants in the cross examination of the plaintiff's witnesses, who were already examined the production was necessitated. The plaintiff was yet to close its evidence in that case. There cannot be any manner of dispute with the proposition that the production of documents under Order 7 Rule 18 (2) is different than the one

contemplated under order 7 Rule 18(1) or Order 7 Rule 14 of C.P.C. However, the question is whether such production is pursuant to any question put in the cross examination and the answers given, so as to rebut the case of the defendant. This question would obviously be one of fact depending upon the facts and circumstances of each case. In the present case it has not been shown that the documents are relevant or can be sought to be produced in pursuance of the cross examination of P.W1 on behalf of the contesting respondents. Thus no case for interference is made out. The petition is accordingly dismissed. However, reserving a liberty to the petitioners to question the impugned order in an appeal challenging the decree in the suit if at all it is adverse.

C. V. BHADANG, J.

Ap/