

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 454 OF 2017**

Mr. Vinay Kshirsagar, major in age, s/o
Anant Kshirsagar, R/o H. No. 409, Shiv
Tower, 4th Floor, Patto Plaza, Panaji, Goa.
Represented herein by his Attorney, Mr.
Aniket Suresh Devidas, major in age, s/o
Suresh Devidas, R/o H. No. 84, Post
Assonora, Kasarpal-Goa.

.... Petitioner

Versus

1. Comunidade of Serula of Bardez
Taluka, Bardez-Goa.

2. The Administrator of Comunidade of
North Goa, Mapusa, Bardez-Goa.

.... Respondents

Shri Mahesh Amonkar, Advocate for the Petitioner.

Ms. Akshata Kale, Advocate for the Respondent No. 1.

CORAM:- C. V. BHADANG, J.

DATE:- 31st JULY, 2017

ORAL JUDGMENT:

Rule made returnable forthwith. The learned
Counsel for respondent no. 1, waives service. Heard finally by
consent of parties.

2. The petitioner is challenging the order dated
09.02.2017, passed by the learned Senior Civil Judge at
Mapusa, by which an application (Exhibit-D/26) filed by the
petitioner, under Section 65 of the Indian Evidence Act, for

leading secondary evidence has been rejected.

3. The petitioner has filed Special Civil Suit No. 102/2009/A, against the respondents for carrying out final demarcation of the suit plot, for fixing of the boundary stones and for damages etc. The petitioner filed an application under Section 65 of the Evidence Act for permission to lead secondary evidence in respect of four documents namely (i) the Certificate of Allotment of the plot; (ii) Receipt No. 541; (iii) Receipt No. 4719 and (iv) Receipt No. 4731, on the ground that the petitioner has lost/misplaced the said documents, which are not traceable inspite of best efforts. According to the petitioner, the matter was also reported to Panaji Police Station.

4. The application was opposed by the respondents.

5. The learned Trial Court has found that the petitioner has not mentioned as to when the copies were obtained, with whom the original documents were and as to when the documents, went missing. This according to the learned Trial Court shows that the petitioner has not fulfilled the conditions of Section 65(c) of the Evidence Act, which is the reason why the application is rejected.

6. I have heard Shri Amonkar, the learned Counsel for the petitioner and Ms. Kale, the learned Counsel for the respondent no. 1.

7. It is submitted by the learned Counsel for the petitioner that the application is supported by an affidavit and exact particulars as to when, the documents were misplaced, is not necessary for permission to lead secondary evidence. The learned Counsel has pointed out the contents of para 11 of the written statement filed by the respondent no. 1, in which the respondent no. 1, has not disputed that the suit plot was allotted for construction of the house and temporary possession was given to the petitioner, so also, the petitioner having paid foro for 20 years.

8. The learned Counsel for the respondent no. 1, on instructions, states that the record on the basis of which the Certificate was issued and the copies of the receipts, are not available with the respondent no. 1.

9. Under Section 65(c) of the Evidence Act, the Court can permit secondary evidence to be led, when the original document has been destroyed or lost or when the party offering

evidence of its contents, cannot for any other reason, not arising from any default, produce it within reasonable time. Considering the fact that the petitioner has stated on affidavit that the documents are lost and further having regard to the contents of para 11 of the written statement, I find that the application can be allowed, subject to the question of proof of the documents being left open.

10. In the result, the following order is passed:

ORDER

- (a) The petition is allowed.
- (b) The impugned order dated 09.02.2017 is set aside.
- (c) The application (Exhibit-D/26) for the production of secondary evidence is allowed.
- (d) This is however subject to the proof of the document in accordance with law.
- (e) The petition is disposed off in the aforesaid terms.

C. V. BHADANG, J.