

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 568 OF 2017**

Mrs. Vasundhara Prabhakar Naik (expired),
 wife of late Shri Prabhakar Shambhoo Naik,
 through her legal representative, Mr. Anil
 Prabhakar Naik, Major in age, r/o 64/F,
 Parel Village, Parel, Mumbai - 400 012. Petitioner

Versus

1. Smt. Lourdin D'Silva
2. Mr. Aleixo D'Silva
3. Mrs. Luiza D'Silva
4. Mr. Gonsal D'Silva
5. Mrs. Regina D'Silva
6. Mr. Silvan D'Silva
7. Mrs. Anita D'Silva
8. Mr. Francisco D'Silva

All r/o Elmonte Theatre, Opp. Jamata
 Garage, Desterro Ward, Vasco da Gama
 Goa.

All are the legal heirs of late Simao
 D'Silva.

9. Shri Prabhakar Shambhoo Naik
 (expired), Through his legal heirs:
 - a) Mr. Sham Prabhakar Naik, married to
 - b) Mrs. Shobha Sham Naik,
 - c) Mr. Anil Prabhakar Naik, married to
 - d) Mrs. Joyce Anil Naik,
 - e) Mr. Dipak Prabhakar Naik, married to
 - f) Mrs. Megha Dipak Naik.

All residents of 64/F, Parel village,
 Parel, Mumbai 400 012.

.... Respondents

Shri Rama Gajanan Rivankar, Advocate for the Petitioner.

Shri Joaquim Godinho, Advocate for the Respondent Nos. 1 to 4.

CORAM:- C.V. BHADANG, J.

DATE:- 15th November, 2017.

ORAL JUDGMENT:

On 13.09.2017, a notice for final disposal was issued in this petition. Accordingly, I have heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondent nos. 1 to 4, who are the contesting respondents and the petition is being disposed of finally.

2. The challenge in this petition is to the order dated 02.06.2017, passed by the learned Trial Court refusing to re-open the evidence of the petitioner/plaintiff. The petitioner had filed an application for re-opening of the evidence on 27.04.2017, on the ground that PW-1 was suffering from prostate enlargement with recurrent UTI with residual urine and persistent low backache and was under medication and was advised rest. A medical certificate was produced in support.

3. The learned Trial Court by the impugned order found that the suit was of the year 2011 and was pending for more than five years and there was a direction from the Appellate Court to dispose of the suit expeditiously. The learned Trial Court has also observed that the petitioner had sought two

adjournments before filing the affidavit in evidence on 23.08.2016. The learned Trial Court also noted that the evidence of PW-1 was partly recorded on 17.09.2016 and since then, PW-1 had failed to remain present. It appears that in the interregnum, an application for amendment and for production of documents were filed. In short, the Trial Court found that the suit was adjourned for more than five occasions and therefore, the evidence of the petitioner was closed.

4. On hearing the learned Counsel for the parties and having regard to the fact that PW-1 was prevented on account of his medical condition in attending the Court, which is supported by medical certificate, an opportunity can be granted to the petitioner, subject to the condition of payment of costs.

5. The learned Counsel for the petitioner undertakes that PW-1 shall remain present before the Trial Court on 27.11.2017 at 2:30 p.m.

6. Hence, the following order is passed:

ORDER

- (a) The petition is allowed.
- (b) The impugned order is set aside.

- (c) The petitioner shall be permitted to further examine PW-1 and to lead any other evidence.
- (d) This shall be subject to payment of costs of Rs.10,000/- to the contesting respondent nos. 1 to 4. The costs to be paid on or before the next date.
- (e) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

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