

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.9 OF 2012**

Shri Jose D'Sa,  
Major, married, service,  
Resident of Modlem Bhat,  
Azossim, Tiswadi-Goa .. Petitioner

**Vs**

- 1a. Shri Benino da Silva Rebeiro  
(deceased)
  - b. Smt. Benalsa de Silva Rebeiro  
(deceased)
  - c. Smt. Benala de Silva Rebeiro  
(deceased)  
Through their heir Smt. Yvonne  
Soares, Major, married, service,  
Resident of Modlem Bhat,  
Azossim, Tiswadi-Goa.
2. Smt. Ida D'Sa,  
Wife of Jose D'Sa,  
Major, married, service,  
Resident of Modlem Bhat,  
Azossim, Tiswadi-Goa .. Respondents

Mr. Mr. R. Rao, Advocates for the petitioner.

Mr. G. Agni and Mr. E. Usapkar, Advocates for the respondents.

**Coram :- M. S. SONAK, J.**

**DATE :- 20<sup>th</sup> April, 2017**

**ORAL JUDGMENT :-**

Heard Mr. Raunak Rao for the petitioner and Mr. G.  
Agni for the respondents.

2. The challenge in this petition is to the orders dated 04/03/2011 and 08/04/2011, made by the Mamlatdar and the Deputy Collector (Revisional Authority), declining to accept the following documents in the course of the proceedings, in which the petitioner has applied for a declaration of tenancy :-

- a) *Lease dated 12/01/1963.*
- b) *Rent receipt dated 25/5/1984*
- c) *Complaint dated 19/01/1993 by Jose Francisco D' Sa to the Range Forest Officer*
- d) *Deposit receipt 19/01/1993*
- e) *Cash memos issued by Goa Bagayatdar Sahakari Kharedi Vikri Society Ltd.*

3. The impugned order dated 04/03/2011 made by the Mamlatdar reads thus :

*“the documents on which the question is posed by the applicant advocate are the documents the production of which was objected by the opponent at earlier stage on 06/10/2009 and the production of the same was marked as X subject to production of the same either by the author or hand writing expert. According to me the said order is not been set aside either by the Deputy Collector or Hon'ble High Court and the observations made by the Hon'ble High Court in order dated 17/6/2010 is that the said documents are to be produced only if they are proved either by hand*

*writing expert or the author who has executed the same, there are no pleadings to the effect that the witness is conversant with the hand writing of the maker of the said document and therefore the question posed by the advocate for applicant is disallowed, and the objection is sustained."*

4. Against the aforesaid order, the petitioner instituted a Revision before the Deputy Collector. The revision was, however, dismissed by an order dated 08/04/2011. This petition was admitted on 05/07/2012 and interim relief which was granted earlier i.e. stay of further proceedings before the Mamlatdar, was continued.

5. Earlier, the Mamlatdar, by an order dated 06/10/2009, had also declined to accept the aforesaid documents. As against such refusal, the petitioner had ultimately instituted W.P.No.109/2010, which was disposed of by an order dated 17/06/2010, which reads thus :

*"There is no dispute that the three documents have been taken on record by the Mamlatdar subject to proof. The petitioners are always at liberty to prove the same and at that stage they are bound to be taken on record as exhibits. With the above observations, Writ Petition is disposed of."*

6. Mr. Raunak Rao, the learned Counsel for the petitioner submits that in terms of Sections 45, 47 and 67 of the Indian Evidence Act, a party is entitled to avail at least three modes for proving the documents. The first is by examining the author, second is by examining a person, who is acquainted with the handwriting of the person by whom the document is supposed to have written or has signed and third, by examining the handwriting expert. Mr. Rao submits that by the impugned order, the Mamlatdar has virtually insisted that the petitioner should adopt only two of modes i.e. examination of author or examination of the handwriting expert. Mr. Rao submits that this is not proper, particularly because this Court in its order dated 17/06/2010, granted liberty to the petitioners to prove the documents at the appropriate stage and, thereafter, had observed that in case the document are proved, they are bound to be taken on record as exhibits. Mr. Rao submits that a statement was made by the petitioner that he will be able to identify the handwriting and signature of the deceased landlord respondent nos.1 and 2. Mr. Rao submits that the opportunity to prove the aforesaid documents and thereafter exhibit them, has been wrongfully denied to the petitioner and the impugned orders, therefore, warrant interference.

7. Mr. Agni, the learned Counsel for the respondents, has submitted that the Mamlatdar, while passing previous order dated 06/10/2009, had made it clear that the petitioners can prove the documents either by examination of the author or by examining the handwriting expert. This order dated 06/10/2009 was specifically challenged by the petitioner before this Court in W.P.No.109/2010. Writ Petition was disposed of on 17/06/2010, however, the order dated 06/10/2009 was never disturbed or set aside. Mr. Agni, therefore, submits that the order dated 06/10/2009 has attained finality and the Mamlatdar was absolutely justified in not taking any different view in the impugned order dated 04/03/2011.

8. Without prejudice, Mr. Agni further submits that in terms of the decision of Full Bench in the case of ***Hemendra Rasiklal Ghiya Vs. Subodh Mody***; (2008)6 All MR 352, the respondent was justified in raising objection to the mode of proof at the stage when the documents were sought to be exhibited by the petitioner. Further, relying upon the decision of this Court in the case of ***Umesh Bondre Vs. Wilfred Fernandes***; (2007)1 All MR 791, Mr. Agni submits that unless the deponent pleads and, thereafter, establishes in the course of examination-in-chief that the deponent was familiar with and is able to identify the writing,

there is no question of resorting to the mode of proof as prescribed under Section 47 of the Evidence Act. Mr. Agni submits that production of a document accompanied by a bare statement that the witness is familiar with the handwriting of the maker, does not constitute compliance with the provisions contained in Section 67 of the Evidence Act. Mr. Agni points out that in this case, neither in the pleadings nor in his examination-in-chief, the petitioner had pleaded or deposed that he is acquainted with the signature or the handwriting of the landlord. In fact, the evidence on record bears out that the petitioner was hardly 8 years of age in the year 1963 when the alleged handwriting is stated to have been made by the landlord. Mr. Agni points out that the stray sentence in the deposition of the petitioner that he will be able to identify the handwriting and signature of the deceased landlord, was a elicited by posing a leading question and, therefore, even otherwise, such part of deposition is liable to be excluded and cannot be read as legally admissible evidence. Mr. Agni submits that since there was no stay on proceedings, the evidence of both the parties has concluded, the arguments have also concluded and the matter was only posted for final order, at this stage, this Court may not interfere with the impugned orders.

9. Rival contentions now fall for determination.

10. Normally, the Courts of law must be slow to shut out any evidence or at least an opportunity to parties to lead their evidence. These are the proceedings before the Mamlatdar, in which the petitioner has applied for a declaration of tenancy. The rigour of procedure, which is otherwise practised before civil courts, cannot apply with the same severity in the proceedings before the Mamlatdar under beneficial legislation like Agricultural Tenancy Act.

11. The Mamlatdar, by an order dated 06/10/2009, had declined to accept three documents on the ground that the same had to be proved either by examining the author or handwriting expert. The Mamlatdar, however, cannot be said to be right in holding that this order dated 06/10/2009 had attained finality and therefore, there was no question of taking any different view in the matter. The order dated 06/10/2009 was challenged by the petitioner by instituting a Writ Petition No.109/2010. As noted earlier, although there is no formal order to set aside the order dated 06/10/2009, this Court, after noting that the documents have already been taken on record by the Mamlatdar, granted specific liberty to the petitioners to prove the same and observed that at that stage, they are bound to be taken on record as

exhibits. This Court nowhere said that the documents have to be proved only by resort to two specified means i.e. examination of author or examination of handwriting expert. This Court granted liberty to the petitioner to prove the documents and this liberty would also include a third mode, subject of course to the fulfillment of parameters as prescribed under the law. The Mamlatdar was not justified in taking a view that his earlier order dated 06/10/2009, had attained finality since the same was not formally set aside by this Court and on that basis, insisting that the petitioner should resort only to the mode of proving these document by examining their author or by examining some handwriting expert.

12. Mr. Agni is right in his submission that this is not permissible for a party to make some bare statement that he is familiar or acquainted with the handwriting of the author and, therefore, he should be permitted to exhibit such a document. However, it is to be noted that at the stage when the impugned order was made, the petitioner had not concluded his evidence. Though these documents were not specifically referred to in the application seeking declaration of tenancy, there is no dispute that these documents were specifically referred to in the list of documents appended to the application seeking declaration. In

such circumstances, it is premature to say that these were some gotten up documents for the occasion. The petitioner in the course of deposition, has made a statement that he will be able to identify the handwriting and signature of the deceased landlord nos.1 and 2. The petitioner, in such circumstances, at least, should have been given further opportunity in the matter of proof of these documents by resort to the provisions under Section 47 of the Evidence Act. No doubt, the respondents, would have the full opportunity to cross-examine the petitioner and to demolish his claim that he was at any time familiar with or acquainted with the writing or the signature of the author of the said documents. However, at least some liberty was necessary to have been given to the petitioner to prove the documents by resort to the provisions contained under Section 47 of the Evidence Act. The learned Mamlatdar, by observing that his earlier order dated 06/10/2009 had attained finality, has put fetters upon his own discretion in the matter. For this reason, the impugned orders are liable to be interfered with and set aside.

13. It is true that the evidence in the matter has concluded. However, in the circumstances of the present case, the petitioner can always be granted liberty to re-step in the witness box and depose only in the context of the aforesaid

documents. Accordingly, after setting aside the impugned orders, liberty is granted to the petitioner. Since this is an old matter, the parties are directed to appear before the concerned Mamlatdar, in order to ascertain as to whether the matter stands transferred to the learned Civil Judge, Junior Division in view of the amendment to the Agricultural Tenancy Act. Thereafter, the parties to appear before the concerned Civil Judge, Junior Division, to whom the matter might have been allotted. The concerned Civil Judge, Junior Division to dispose of the matter as expeditiously as possible and in any case, within a period of three months from today.

14. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

15. All concerned to act on basis of authenticated copy of this order.

SMA

M. S. SONAK, J.