

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No. 674 OF 2017

Comunidade of Colvale
Through its Special Attorney
Shri. Servo Fernandes
R/o. Colvale, Bardez, Goa.

... Petitioners

Versus

- (1) Shri. Benjamin Pereira,
Mushir vaddo,
Colvale, Bardez, Goa.
(since dec.) through Lrs
- i. Mrs. Mataline Pereira alias
Mrs. Luiza Maria D'souza,
w/o Benjamine Pereira,
81 years old, House wife,
Residing in house no. 41/1,
Mushir Colvale, Bardez, Goa.
 - ii. Mr. Gabriel Pereira alias
Mr. Joseph Pereira,
S/o Benjamine Pereira,
50 years old, Bachelor, agriculturist,
Residing in H. No. 41/1
Mushir Colvale, Bardez, Goa.
 - iii. Mrs. Balbina Pereira alias
Mrs. Perpetua Pereira,
d/o Benjamine Pereira,
53 years old, married, House wife,
Residing in H. No. 41/1
Mushir Colvale, Bardez, Goa.
 - iv. Mr. Lourenco Camilo Fernandes,
Husband of Balbina Pereira,
50 years old, service,
Residing in H. No. 41/1
Mushir Colvale, Bardez, Goa.

- v. Mrs. Christaline Fernandes,
d/o Benjamine Pereira,
48 years old, widow, Housewife,
Residing in House No.25/B,
Leela Mansion, Gokhale road (S),
Dadar, Mumbai-400 028.
 - vi. Miss. Joanna Alex Fernandes
d/o late Alex A. J. Fernandes,
12 years old, student,
Residing in H. No. 25/B,
Leeal Mansion, Gokhale road (S),
Dadar, Mumbai – 400 028.
- (2) The Administrator of comunidades,
North Zone Mapusa Goa.
- (3) Mr. Philip Pereira,
S/o. Benjamine Pereira,
46 years old, Married, service,
Residing at parra Towers,
Parra Bardez Goa
- (4) Mrs. Josephine Pereira,
w/o Philip Pereira
47 years old, Housewife,
Residing at parra Towers,
Parra Bardez Goa.
- ... Respondents**

Shri Gaurish Agni, Advocate with Mr. Eeshan Usapkar, Advocate for the
Petitioners.

Mr. Raunaq Rao, Advocate for the Respondents.

Coram :- C. V. BHADANG

Date : 09th October, 2017

ORAL JUDGMENT:

Rule made returnable forthwith. Learned Counsel for the respondents
waives service on behalf of respondent no. 1(i) to 1(vi), 2, 3 and 4. Heard

forthwith with the consent of the parties.

2. The petitioner is challenging the Order dated 27.07.2017 passed by the Trial Court thereby refusing to grant opportunity to the petitioner to cross-examine the witness for the respondent. Learned Trial Court has found that in spite of giving opportunity the petitioner had failed to cross-examine the witness.

3. The brief facts are that the contesting respondents have filed an appropriate declaration as a tenant against the petitioner, in respect of the subject land. It appears that the chief examination of the witness for the respondent was conducted on 13.06.2017 when there was no appearance on behalf of the petitioner. It is contended on behalf of the petitioner that while recording cross-examination, the Trial Court has permitted a set of documents to be produced on record at the instance of the contesting respondents. It is contended that the copies of these documents were not provided to the petitioner. It is also contended that the trial court had granted permission to the respondents to lead secondary evidence in respect of some of these documents.

4. In fact, the record discloses that prior to the passing of the impugned Order, the petitioner had filed application at exhibit D-21 for recall of the

witness on which the respondent gave no objection. That application was accordingly allowed. However, again there were adjournments sought on one or two occasions on the ground that the petitioner wanted to seek a review of the order permitting secondary evidence to be led. According to the petitioner, the application for review could not be filed as the certified copy of the order permitting secondary evidence to be led, was not furnished to the petitioner. It is thus contended that the petitioner had acted with due diligence and there was no negligence on the part of the petitioner.

5. On the contrary, it is contended on behalf of the respondent that sufficient opportunity was granted to the petitioner and, in fact, on earlier occasion the order closing the cross-examination was also recalled.

6. I have carefully considered the rival circumstances and the submissions made. On hearing the learned Counsel for the parties and on perusal of the records it does appear that the petitioner could have acted with greater diligence and expedition. In fact by the order dated 11.07.2017 Exhibit D-21 the petitioner was permitted to cross-examine the witness. However, subsequently, again time was sought on the ground that the petitioner wanted to seek recall of the Order permitting secondary evidence and the copy of the order permitting secondary evidence was not furnished. In my considered view it was not necessary for the petitioner to have obtained the certified copy

when the application for review was filed in the pending proceedings. In any event, the learned Counsel for the petitioner on instructions states that the petitioner shall proceed to cross-examine the witness subject to his objection to the production of the documents and the order permitting secondary evidence. In such circumstances and considering the fact that the petitioner is a public body and in order to ensure that the matter is decided on merits rather than on technicality, the petition is allowed. The impugned order is hereby set aside. The petitioner shall be permitted to examine the witness subject to objection and all just exceptions to the production, admissibility and proof of the documents. The petitioner shall ensure that the witness for the respondent is cross examined on the next date.

7. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

msr.