

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.873 of 2017**

1. Jagdish Y. Chowgule,
son of late Yeshwantrao Dattaji
Chowgule, age 63 years,
resident of Chowgule House No.273,
Airport Road, Chicalim, Goa
2. Victoria Chowgule,
daughter of Sasanka Mukherji,
aged 61 years, resident of
Chowgule House, House No.
272, Airport Road, Chicalim,
Goa, through her Attorney the
Petitioner No.1 above named. .. Petitioners

Versus

1. Sulekhabai Y. Chowgule,
wife of late Yeshwantrao Dattaji
Chowgule, aged 85 years, resident
of Chowgule House House No.
273, Airport Road, Chicalim-Goa
(since deceased, through her
legal heirs):
 - (I) Daulatrao Y. Chowgule,
and his wife Mrs. Gayatri
Chowgule,
Both of major age, residents of
60-61, Alto Mangor,
Vasco-da-Gama-Goa.
 - (II) Mr. Jaywant Chowgule,
major in age, resident of Chowgule
House, House No.273, Airport
Road, Chicalim-Goa.
 - (III) Mrs. Vidhya Vernekar &
her husband, Mr. Milind Vernekar,
Both major in age, residents of
House No.424, St. Joaquim Road,
Borda, Margao-Goa.
2. Mr. Jagdeep Yeshwantrao Chowgule,
aged 63 years, businessman, resident
of Chowgule House, House No.273,
Chicalim, Ga,

3. Sheela Chowgule,
daughter of late Yeshwantrao
Dattaji Chowgule, aged 63 years,
residing at 34, Lenskok Gopeng,
Taman Golf, 31350, Ipoh, Perak,
Malaysia, presently residing at
Chowgule House, House No.273,
Airport Road, Chicalim-Goa. .. Respondents.

Mr. Rohit Bras De Sa, Advocate for the petitioners.

Ms. S. Bhobe, holding for Ms. A. Rodricks, Advocate for the respondent no.1(II).

Mr. V. P. Thali, Advocate for the respondent no.2.

CORAM :- C. V. BHADANG, J.

DATE:- 28th November, 2017

ORAL JUDGMENT :

On 03/10/2017, a notice for final disposal was issued in this case. I have heard Shri De Sa, the learned Counsel for the petitioners, Shri Thali, the learned Counsel for the respondent no.2 and Advocate Ms. Bhobe, holding for Ms. A. Rodricks, for respondent no.1(II).

2. The petitioners challenge the order dated 20/09/2017, by which the petitioners' (plaintiffs) evidence has been closed.

3. The petitioners had filed an application on 20/09/2017, stating that Advocate for the petitioners was under impression

that there is a counterclaim in the suit and, therefore, the affidavit in evidence was required to be returned and therefore, sought adjournment.

4. The learned Trial Court has rejected the application *inter alia*, on the ground that the suit is pending for last seven years and is expedited by this Court and there is no scope for the petitioners to entertain the impression that there was a counterclaim in the suit.

5. Shri De Sa, the learned Counsel for the petitioners has pointed out that there are three suits between the parties, which are being tried by the same Court and in one out of them, there is a counterclaim. He, therefore, submits that there was a reasonable possibility of the Advocate labouring under an impression that the suit out of which the present petition arises, was one where there was a counterclaim. It is submitted that the only other reason given by the Trial Court is that the matter is expedited by this Court.

6. Shri Thali, the learned Counsel for the respondent no.2 and Ms. Bhobe, holding for Ms. A. Rodricks, the learned Counsel for the respondent No.1(II) have supported the impugned order on the ground that several adjournments have been sought by the petitioners for leading evidence, as set out in the reply dated

14/11/2017 filed in this petition.

7. Shri De Sa, the learned Counsel for the petitioners points out that in the interregnum, the suit was fixed for hearing on the application for amendment and it is not, that on all such dates from the year 2011 and 2012 that the suit was fixed for recording evidence.

8. I have carefully considered the circumstances and the submissions made.

9. It is not in dispute that there are three suits between the parties, which are being tried before the same Court and in one out of them, there is a counterclaim. Thus, there is a reasonable possibility of the petitioners being under misconception, as has been mentioned in the application for adjournment. The only other reason given is that the suit is old. Undoubtedly the Courts are required to conduct the trials in the suit and more particularly, those of the older one, as expeditiously as possible. In the present case, it is the suit filed by the petitioners themselves and it is the petitioners, who should be interested in expeditious disposal of the suit. Thus, it cannot be said that by seeking adjournment the petitioners stood to any gain. Considering the overall circumstances, I find that a fair opportunity can be granted to the petitioners, subject to condition of payment of costs.

10. The learned Counsel for the parties state that the suit is now fixed for evidence on 13/12/2017. The learned Counsel for the petitioners undertakes that the petitioners shall keep his witnesses present and shall file affidavit-in-evidence on that date. The statement is accepted.

11. In the result, the petition is allowed. The impugned order is hereby set aside. The petitioners shall be permitted to lead evidence, subject to payment of costs of Rs.20,000/-. Out of Rs.20,000/-, Rs.10,000/- each shall be paid to the respondent no.2 and respondent No.1(II).

12. Petition is disposed off in the aforesaid terms.

C. V. BHADANG, J.

SMA