

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.946 of 2017.**

Damodar Pandurang Halarnkar
and 3 Ors.. ..Petitioners.

Vs

Mahabaleshwar Pandurang
Halarnkar ..Respondent.

Mr. J. P. Mulgaonkar, Advocate for the petitioners.

CORAM :- C. V. BHADANG, J.

DATE : 7th November, 2017

ORAL ORDER :

Heard Shri Mulgaonkar, the learned Counsel for the petitioners.

2. The petitioners, who are the defendants before the Trial Court, are challenging the order dated 06/10/2017, passed by the learned Trial Court below Exhibits D-98(a) and D-99, thereby refusing to grant leave to the petitioners to produce documents. That application was filed by the petitioners under Order VIII, Rule 1A Sub-rule (3) of the Code of Civil Procedure (Code, for short).

3. The respondent has filed the suit for eviction of the

petitioners from the suit house and for injunction. The petitioners raised an issue that they are in possession of the suit house as mundkars and the issue of mundkarship came to be framed. The respondent/ plaintiff filed an application for deletion / striking out the said issue, which application was dismissed by the Trial Court on 30/06/2008. It is a matter of record that the respondent challenged the same before this Court in W.P. No.582/2008, which was allowed on 18/10/2011, thereby deleting the issue of mundkarship. That order has, in turn, been challenged by the petitioners, in a Letter Patent Appeal No.5/2012 before this Court, which is pending. The Division Bench has passed the following order on 28/09/2012 :

“The Civil Court shall proceed with the matter on the basis that the issue of mundkarship has been struck off, as ordered in the impugned judgment. This, however, will be without prejudice to the appellants' rights and contentions. In the event of the respondent's suit being decreed the decree shall not be executed pending the final hearing and disposal of this appeal.”

4. Coming back to the suit, it was, after the respondent/ plaintiff closed his evidence, that the application for production of documents came to be filed, seeking production of the following

documents :

“(a). Ration card issued by the Department of Civil Supplies and Consumer Affairs with respect to the house bearing V. P. No.342.

(b) Assessment Order for the year 1982-1983 issued by the Income Tax Officer, Margao Circle, Margao in the name of the defendant.

(c) Annual Statement of Accounts for the year 1979-1980 and 1980-1981 issued under the Employees Provident Fund Scheme, 1952 in the name of the defendant.

(d) Electricity bill issued by the Electricity Department dated 17.11.2014 in the name of the defendant with respect to the house bearing V. P. No.342.

And the following documents vide Exh.D-99:

(a) Notice issued by the Court of the Joint Mamlatdar of Bardez-I at Mapusa, Goa in case No.JM-1/MND/SR-8A/Civil-Issue/COL/14/2010.

(b) 6 Water bills with respect to the residential house standing in the name of the defendant.”

5. The learned Trial Court has found that the documents are not relevant for deciding the controversy in the suit as the issue of mundkarship has already been deleted.

6. It is submitted by Shri Mulgaonkar, the learned

Counsel for the petitioner that in an appropriate case, the Court can permit production of documents at any stage if the same are relevant for deciding the controversy in the suit. Reliance is placed on the decision of this Court in the case of **Smt. Chitralekha Fal Dessai Vs. Balu Marathe**; 2007(1) Goa L. R. 155 and **Smt. Shantibai Vardhan and others Vs. Ms. Meera G. Patel and Anr.**; 2009(1) AIR Bom R 586. It is submitted that the documents would be relevant to show a long standing settled possession of the suit house by the petitioner. It is submitted that even otherwise, the matter about deletion of mundkarial issue has not attained finality, as the Letter Patent Appeal, is still pending. In the submission of Shri Mulgaonkar, the production ought to have been allowed in the circumstances.

7. I have carefully considered the circumstances and the submission made and I do not find that any case for interference is made out.

8. There cannot be any manner of dispute with the proposition that the Court can allow production of documents if the documents are shown to be relevant for the purpose of deciding the controversy in the suit. There are cases, in which

such production is allowed even at the appellate stage. Thus, although normally the stage of production of documents is governed by the provisions of Order XIII, Rule 1 of the Code, in an appropriate case, the Court can grant leave to produce the documents, provided they are relevant. The *sine qua non* for allowing such production is that the documents are found relevant for deciding the controversy in the suit. It would be significant to note that although the matter about deletion of mundkarial issue is pending before this Court in the Letter Patent Appeal, the Division Bench, as per the order dated 28/09/2012, has specifically directed that the Civil Court shall proceed with the matter on the basis that the issue of mundkarship has been struck off. The Division Bench has further ordered that this shall be without prejudice to the petitioners' right and contentions and in the event the suit filed by the respondent is decreed, the decree shall not be executed pending final hearing and disposal of the Letter Patent Appeal. It can, thus, be seen that the Division Bench has specifically directed that the suit shall proceed on the premise that the issue of mundkarship has been struck off. The submission on behalf of the petitioners that the documents are necessary to show that the petitioners are in settled possession, to my mind, does not take the case of the petitioners anywhere. This is because, it is

not in dispute that the petitioners are in possession of the suit house in as much as the respondent is seeking eviction of the petitioners.

9. In these circumstances, in my considered view, no exception can be taken to the impugned order, holding that the documents are not relevant for deciding the controversy in the suit. For this reason, no case for interference is made out. The petition is, accordingly, dismissed.

C. V. BHADANG, J.

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