

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 939 OF 2017

JOSEPH S. LOBO.,

... Petitioner

Versus

THOMAS FERNANDES AND ANR.,

... Respondents

Shri Ashwin D. Bhobe with Ms. Shradha Bhobe, Advocates for the Petitioner.

Shri Joaquim Godinho, Advocate for the Respondent No. 1.

Coram:- C. V. BHADANG, J.

Date:- 6th December 2017

ORAL ORDER:

On hearing the learned Counsel for the parties, I find that the petition can be disposed of on a short count.

2. The petitioner, who is the defendant no. 1, in a suit filed by the respondent no. 1, had filed an application for re-framing of additional issue no. 3.

3. The additional issue no. 3 was framed on 29.11.2003, as follows:-

"Whether the defendants prove that the public staircase touches the house of the plaintiff which leads to the public road?"

4. The petitioner wants it to be re-framed as under:-

"Whether the defendants prove that the plaintiff has an access to the public road through the public staircase ?"

5. The learned Trial Court has refused to re-frame the issue on the ground that, re-framing of the issue will not have any effect and is also not relevant for deciding the controversy. The learned Trial Court also found that the suit is of the year 1993 and that, re-framing of the issue will unnecessarily delay the proceedings.

6. It is submitted by Shri Bhobe, the learned Counsel for the petitioner that the Court is required to frame the issues on the basis of the pleadings in the written statement. The learned Counsel has pointed out the contents of the written statement, in order to submit that on the basis of the rival pleadings, the issue as sought to be re-framed, arises in the case.

7. On hearing the learned Counsel for the parties, I am not inclined to interfere with the impugned order. In my considered view, it would be appropriate that the learned Trial Court, while deciding the suit on merits, independently considers, as to what issue arises, having regard to the pleadings made in the plaint

and the contents of the written statement. Subject to this, the petition is dismissed.

C. V. BHADANG, J.

EV