

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 185 OF 2018

JACQUELINE FERNANDES @ JACQUELINE
PHILOMENA BAPTIST AND 2 ORS., ... Petitioners

Versus

THOMAS DIAGO FERNANDES AND 3 ORS., ... Respondents

Shri Valmiki Menezes, Advocate for the petitioners.

Shri Ashwin D. Bhobe, Advoate for the respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 23rd February 2018

P.C.

Heard Shri Menezes, the learned Counsel for the petitioners
and Shri Bhobe, the learned Counsel for the respondent no.1.

2. The challenge in this petition is to the order dated 30/11/2017 passed by the learned Trial Court, by which an application Exh.D-67 for permission to re-examine PW1 Mannuela Fernandes, has been rejected.

3. Shri Menezes, the learned Counsel for the petitioners submits that the suit is filed challenging the Deed of Succession and claiming title and it has all along been the case of the petitioners that the suit property is in possession of the petitioner.

It is submitted that in an application for temporary injunction, the learned Trial Court has prima facie come to the conclusion that the petitioners are in possession of the suit property and as such, temporary injunction was granted. It is submitted that the evidence of PW1, read as a whole, would also indicate that the case made out was that the petitioners are in possession of the suit property. The learned Counsel has pointed out to various portions from the evidence of PW1, including the one where PW1 has refuted a suggestion that the coconut trees situated in the property are enjoyed and looked after by the respondent no.1. It is, thus, submitted that there is a stray statement in which the PW1 has stated that the defendant no.1/ respondent no.1 is in possession of the property. The learned Counsel submits that what PW1 intended was that as per the Form No.I and XIV, the name of the respondent no.1 figures as an occupant. It is submitted that there is ambiguity in the evidence, which has come in the cross-examination, which needs to be clarified. The learned Counsel was at pains to point out that the learned Trial Court, while deciding the application D-67, has practically recorded a finding that there is an admission given on the part of PW1 about the respondent no.1 being in possession of the suit property, which is not correct.

4. Shri Bhobe, the learned Counsel for the respondent no.1 submits that there is no ambiguity whatsoever in the evidence of

PW1 requiring re-examination, which has been rightly refused.

5. I have carefully considered the rival circumstances and the submissions made.

6. It is trite that the evidence of any witness has to be read as a whole and it is not open to the Court to pick and choose any particular statement either in the Chief-examination or in the cross-examination, while appreciating the evidence of such a witness. Under Section 138 of the Evidence Act, re-examination can be permitted to 'explain' the matters referred to in the cross-examination and if a new matter is by permission of the Court introduced in re-examination, the same is subject to right of adversary to cross-examine upon that matter. Thus, the question whether re-examination is competent and whether it has to be permitted essentially, depends upon the fact as to whether there is any ambiguity, which has surfaced in the cross-examination, which needs to be explained.

7. In the present case, there is a statement, which is given in the cross-examination of PW1 that the respondent no.1 is in possession of the suit property. This statement, in my considered view, has to be read along with the entire evidence of PW1. It may be further mentioned that the evidence led on behalf of the petitioners/ plaintiffs will have to be read in consonance with the

case made out in the plaint. Having carefully gone through the evidence of PW1, I do not find that any case for permitting re-examination is made out, subject to the condition that the learned Trial Court, while deciding the suit, shall read the evidence of PW1 as a whole and shall not be influenced by the observations in the impugned order. With this, the petition is disposed of.

C. V. BHADANG, J.

SMA