IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.685 OF 2018

1. K. Ganeshan,
   Son of Kannayaram Ganeshan,
   77 years of age, retired, Indian,
   resident of House No.3(1),
   Mala, Chandel, Pernem, Goa.

2. Smt. Kamaxi Ganeshan,
   Wife of K. Ganeshan,
   70 years of age, retired, Indian,
   resident of House No.3(1), Mala,
   Chandel, Pernem, Goa.
   Both represented through
   their Power of Attorney,
   their daughter, Smt. Sarita Dias,
   45 years , housewife,
   resident of House No.3(1),
   Mala, Chandel, Pernem, Goa. …. Petitioners

versus

1. Shambu D. Gauns,
   Son of Dashrath Gauns,
   married, Bus Owner,
   65 years, resident of Chandel,
   Pernem, Goa.
2. Smt. Sulochana Gauns,
   Wife of Shambu Gauns,
   married, Housewife, 45 years,
   resident of Chandel,
   Pernem, Goa. ... Respondents

Shri Raunaq Rao, Advocate for the Petitioners.
Shri Yeshwant R. Teli, Advocate for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on :- 24th AUGUST, 2018
Pronounced on :- 29th AUGUST, 2018

JUDGMENT :

Rule. Rule made returnable forthwith with the consent

of the learned Counsel appearing for the parties. The parties were put to notice that the matter would be disposed off at the admission stage itself. Learned Counsel appearing for the respondents waives service.

2. The petitioners seek to invoke the supervisory jurisdiction of this Court under Article 227 of the Constitution of India while challenging the legality and validity of the orders dated 12/03/2018 and 21/06/2018 passed by the CJJD, Pernem pursuant to which the learned Trial Judge denied the petitioners the opportunity to seek recasting of the issues or to lead evidence on the existing issues despite the order of remand dated 27/12/2017 passed by the Adhoc District Judge-I.

3. Heard Shri R. Rao, learned Advocate for the petitioners who contended that eleven issues were framed initially by the Trial Court and thereafter after the parties led evidence, the matter came to be heard and listed for judgment. The learned Trial Court however, without any notice to the parties reformulated the issues to six in number from the ten earlier framed and on which the parties had gone to trial and

ultimately dismissed the suit vide the judgment and order dated 11/09/2014. They had preferred an appeal against the said judgment and order being aggrieved thereby and which came to be disposed off by the learned Adhoc District Judge vide her judgment dated 27/12/2017 pursuant to which she partly allowed the appeal and remanded the matter to the Trial Court for affording an opportunity to the parties on the amended/altered/deleted issues and to pass appropriate orders in accordance with law. The decree however drawn by the Appellate Court showed that the appeal stood dismissed and thereupon a corrigendum was issued correcting the position and showing that the appeal was partly allowed. The Trial Court however closed the evidence of the petitioners on 12/03/2018 and an application came to be filed for a review of the said order. The learned Judge however by the order dated 21/06/2018 dismissed the review application.

4. Shri R. Rao, learned Advocate for the petitioners placed reliance in **Satnam Singh Sharma V/s. Tarloki Nath Kalia & Anr. [AIR 1974 Punjab and Haryana 287]** in support of his case. He referred to para 22 and 23 of the judgment passed by the learned First Appellate Court where there was a

clear observation that the issues cast on the respective parties were modified substantially and all the issues cast on the respondents/defendants were deleted while at the same time not failing to observe that the Courts have power under Order XIV Rule 5 CPC to amend and/or strike out the issues at any time before passing a decree. The learned District Judge had also observed that great prejudice was caused to the petitioners herein and they were put to surprise as they had absolutely no opportunity to put up their case after the issues came to be altered/amended/deleted. Moreover, the learned First Appellate Court observed that it had refrained from giving any finding on any of the issues as framed since it was in the interest of justice and fairness that the Trial Judge be directed to consider the whole aspect in totality by allowing the parties to lead evidence and without getting influenced by the order under challenge. Serious prejudice was caused to the petitioners and therefore the order had to be quashed and set aside and the petition had to be allowed.

5. Shri Y. Teli, learned Advocate for the respondents had adverted to Order XIV Rule 5 CPC and submitted that there were ample powers in the Court to recast and/or amend the

issues while formulating the issues under Order XIV Rule 5 CPC. He referred to the roznama in the proceedings to buttress a contention that sufficient time was granted to the petitioners despite which they had not availed of the opportunity to lead additional evidence. Moreover, the petitioners had also not raised any issue in the appeal that the issues were changed/recast during the judgment and therefore on all these counts, no interference was called for with the judgment under challenge.

6. i have heard Shri R. Rao, learned Advocate for the petitioners and Shri Y. Teli, learned Advocate on behalf of the respondents, considered Order XIV Rule 5 CPC qua the powers of the Court, the judgment in **Satnam Singh Sharma** (supra) and the accompanying records to better appreciate their submissions. It is borne out from the records that the Trial Judge while passing the judgment dated 11/09/2014 had reproduced the issues as originally framed and considering the submissions made on behalf of the defendants, suo moto reframed the issues and rendered the findings in the judgment, nowhere reflecting in the body of the judgment that any opportunity was given to the parties to lead evidence

on the recast issues. It is another matter that the Trial Court in its wisdom dismissed the suit with costs giving rise to the appeal at the instance of the petitioners herein. The learned First Appellate Court clearly observed at paragraph 20 of its judgment that the Trial Court by its order dated 17/07/2007 had framed ten issues based on the pleadings of the parties and on that basis the parties went for trial and adduced the evidence based on the issues as framed for determination.

7. The learned First Appellate Court further observed that after hearing the respondents and taking the application of the respondents on record and the reply of the petitioners herein, the judgment was passed and which showed that the issues were substantially modified and all the issues cast on the defendants were deleted without ignoring the fact that there were ample powers in the Court under Order XIV Rule 5 CPC to amend or strike out issues at any time before passing a decree. The learned First Appellate Court had observed and rightly so that such an action on the part of the Trial Court had caused great prejudice to the petitioners who were put to surprise and had absolutely no opportunity to put up their case after the alteration/amendment of the issues suo moto

by the Presiding Judge and that the petitioners had no opportunity to meet the amended issues or to bring on record the consequences which had arisen out of the deletion of the issues cast on the respondents. In that view of the matter, the learned First Appellate Court rightly allowed the appeal partly remanding the file to the Trial Court for affording opportunity to the parties on the amended/altered issues and to pass appropriate orders in accordance with law. It is another matter that the decree passed by the First Appellate Court showed that the appeal was dismissed but a corrigendum nonetheless was issued indicating that the appeal was partly allowed.

8. The petitioners moved the Trial Court for a review invoking its jurisdiction under Section 47 CPC spelling out in clear terms that the order passed by the Trial Court dated 01/03/2018 and 12/03/2018 suffered from an error apparent on the face of the record and that permitting such orders to stand would lead to a failure of justice. However, the learned Trial Judge by the order under challenge dated 21/06/2018 declined to review its order dated 01/03/2018 where it had rejected the application for time on the specious premise that

no stay order was placed on record of the First Appellate Court. The learned Trial Judge was mainly swayed by the fact that the file was more than ten years old and that as per the standing instructions it had to be taken up and disposed off expeditiously. The Trial Court however on that premise alone and without giving due weightage to the order passed by the First Appellate Court dismissed the application for time by its order dated 01/03/2018 and further aggravating the matter by saddling the petitioners with costs of ₹2,000/-. The learned Trial Judge also by using the same ground of the matter being old refused to grant the time to the petitioners and also on the premise that no stay order was brought from the Appellate Court staying the said proceedings. The learned Judge was very cussed and obstinate in her stand that issues were already altered/modified/reframed by her predecessor at the time of passing the judgment and took the case further by holding that there were no directions from the First Appellate Court to reframe or alter or delete the issues by completely giving a go by to the directions contained in the First Appellate Court order of giving opportunity to the parties on the amended/altered/deleted issues and only then to pass appropriate orders in accordance with law. The Trial court

therefore by its order caused serious prejudice to the petitioners.

9. In **Satnam Singh Sharma** (supra), a learned Single Judge of Panjab and Haryana High Court held that the Court cannot confine additional evidence to be examined by the parties only to the documents already placed on record if permission to raise additional issue is granted. Therefore considering thus the factual matrix and that the Trial Court exceeded its jurisdiction causing serious prejudice to the petitioners, the jurisdiction of this Court is required to be exercised in the interest of justice. In view thereof, i pass the following :

O R D E R

(i) The petition is allowed.

(ii) The impugned order is quashed and set aside.

(iii) Rule is made absolute.

(iv) The parties are directed to appear before the learned Trial Court on 17/09/2018 at 10.00 hrs.

NUTAN D. SARDESSAI, J.

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