

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1026 OF 2018****FRANCISCO MONTEIRO.,****... Petitioner****Versus****VILLAGE PANCHAYAT OF MERCES, THR.
ITS SECRETARY AND 4 ORS.,****... Respondents**

Adv. Vallabh D. Pangam for the Petitioner.

Adv. Ashwin D. Bhobe with Adv. Ms. Annelise Fernandes for Respondent no.1.

Mr. A. Prabhudessai, Additional Government Advocate for Respondents no.4 and 5.

Coram:- C. V. BHADANG, J.**Date:- 21st November 2018.****Oral Order:**

Heard Mr. Pangam, the learned counsel for the petitioner, Shri Bhobe, the learned counsel for the respondent no.1 and the learned Additional Government Advocate for the respondent nos. 4 and 5. The respondent no.2 is absent though served.

2. Looking to the limited issue involved and in view of the fact that the respondent no.3 (defendant no.3) had not filed any reply to the application for

recasting of the issue and further having regard to the nature of the issue no.1 which is sought to be recast, notice to the respondent no.3 is dispensed with.

3. The only contention raised on behalf of the petitioner is that as per Order 14 Rule 3 (c) of C.P.C, the Court is required to look into the pleadings as also the documents produced while drawing the issues. Initially in the plaint, the petitioner had claimed that the encroachment by the defendant no.1, 4 and 5 was as shown in blue colour in the survey plan which was annexed to the plaint. In that view of the matter the trial court had framed the following issue no.1:

“Does the plaintiff proves that the defendant no.1, 4 and 5 have illegally trespassed and encroached into part of the suit property bearing survey no.10/22 of Mercas village, Tiswadi taluka, Goa and without acquisition illegally constructed and/or extended the road into the suit property as shown in blue colour in the survey plan?”

4. During the course of the trial the petitioner examined the surveyor and produced the report of the surveyor in the evidence. The petitioner sought recasting of issue no.1 in the following terms:

1. Does the plaintiff proves that the defendant no.1, 4 and 5

have illegally trespassed and encroached into part of the suit property bearing survey no.10/22 of Mercedes village, Tiswadi taluka, Goa and without acquisition illegally constructed and/or extended the road into the suit property as shown in the Exhibit A colly/ Exh-104 (1 & 2) i.e. site plan annexed to the surveyor's survey report dated 12/12/2013."

5. It can thus be seen that in short, the petitioner wants to claim that instead of the encroachment being as shown in blue colour portion in the plan annexed to the plaint, the encroachment is as shown in the surveyor's report dated 12/12/2013. There cannot be any manner of dispute that along with the pleadings the Court is required to look into the documents produced by the parties while framing issues. However the contents of the documents and the substantive pleading made by the party should be in consonance with each other.

6. The trial court while refusing to grant the application for modification/recasting of the issue no.1, has observed that the present issue no.1 covers the entire controversy and the surveyor's report as produced on record, will be appropriately considered while deciding the suit. In that view of the matter, I do not find that the impugned order suffers from any infirmity. The

petition is without any merit and it is accordingly dismissed.

C. V. BHADANG, J.

Ap/-