

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1121 OF 2017**

Lawrence Jose Fernandes, major of age,
married, resident of H. No. 921, Madhlamaj-
Mandrem, Goa.

.... Petitioner

Versus

1. Mr. Ramakant Yeshwant Pednekar,
 2. Mrs. Ramakant R. Pednekar,
 3. Chandrakant Yeshwant Pednekar,
 4. Mrs. Chandrakant Y. Pednekar,
All major of age, r/o H. No. 569,
Madhlamaj, Mandrem, Pernem, Goa.
 5. Mrs. Vasudev Hari Pednekar,
 6. Mr. Eknath Hari Pednekar,
 7. Mrs. Eknath H. Pednekar,
All major of age, r/o H. No. 656,
Madhlamaj, Mandrem, Pernem, Goa.
 8. Salvador D'Souza (expired)
Ms. Selvica D'Souza, 18 years of age,
daughter of late Salvador D'Souza,
resident of House No. 653, Madhlamaj,
Mandrem, Pernem, Goa.
 9. Mrs. Salvador D'Souza, both major of age,
r/o H. No. 653, Madhlamaj, Mandrem,
Pernem, Goa.
 10. Rauji Laximan Gadekar,
 11. Mrs. Rauji L. Gadekar,
Both major of age, r/o H. No. 744,
Marathawada Patiache Bag, Mandrem,
Pernem, Goa.
 12. Vasudev Rajendra Deshprabhu, major,
married, H. No. not known, Naner Vaddo,
Pernem, Goa.
 13. Shri Sitaram Manguesh Mandrekar, major
of age, married, r/o 11/295 Bakul New M-
9-G, Colony Bandra (E) Mumbai 51.
- Respondents

Shri Valmiki Menezes, Advocate for the Petitioner.

Shri Devidas J. Pangam, Advocate for the Respondent Nos. 1 to 11.

CORAM:- C.V. BHADANG, J.

DATE:- 6th SEPTEMBER 2018

ORAL JUDGMENT:

Rule made returnable forthwith. Shri Pangam, the learned Counsel, waives service on behalf of the contesting respondent nos. 1 to 11. The respondent nos. 12 and 13 (who are the original defendant nos. 12 and 13), have since been deleted before the Trial Court. The issue of tenancy has also been deleted, which has been confirmed by this Court on 08.09.2017 in Writ Petition No. 389/2016. In that view of the matter, the service of notice on respondent nos. 12 and 13 is dispensed with. Heard finally by consent of parties.

2. The petitioner, who claims to be the tenant, is challenging the order passed by the learned Trial Court in Regular Civil Suit No. 41/2004 (incorrectly mentioned as Special Civil Suit No. 41/2011), whereby an application (Exhibit-56), filed by the petitioner, for production of documents has been dismissed.

3. The petitioner has filed the aforesaid suit, simpliciter for injunction, on the ground that he is a tenant of the part of the property bearing survey no. 308/1 of village Mandrem, in equal shares to the predecessors in title of respondent nos. 12 and 13. The respondent nos. 1 to 7 and 9 to 11 are also claiming to be the tenants in respect of the entire survey no. 308/1. It appears that initially, the issue of tenancy was framed, which was referred to the Mamlatdar in the year 2006 and as such, the proceedings in the suit were stayed. It appears that the respondent nos. 1 to 7 and 9 to 11 had filed an application for deletion of the issue of tenancy, which was allowed. That order was challenged by the petitioner before this Court in Writ Petition No. 389/2016, which was dismissed on 08.09.2017.

4. It can thus be seen that for all practical purposes the suit was not proceeded right from the year 2006 to 2016. It is a common ground that evidence in the suit has not started. The learned Trial Court has refused to allow the production, on the ground that the documents are not relevant and secondly, there is a long delay in producing the documents. In my considered view, the relevancy of the documents, can be decided by the learned Trial Court, when the parties lead evidence at the Trial. Insofar as the delay is concerned, as noticed earlier, from the

year 2006 to 2016, the matter was awaiting the decision on the issue of tenancy, pending before the Mamlatdar. On considering the overall circumstances, the production of the documents can be allowed, subject to their relevancy, proof and probative value being kept open, to be gone into at the trial. In that view of the matter, the impugned order is set aside. The petitioner is permitted to produce the documents, subject to the relevancy, proof and probative value of the documents being kept open, to be gone into at the trial. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

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