

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 131 OF 2019**

Ladharam Jivraj Patel, Thr. POA,
Suresh L. Patel & Another ... Petitioners
Versus
Maria Eufemia Gregorinha Rodrigues
@ Sister Susanna & 17 Others ... Respondents

Mr. Jatin Ramaiya, Advocate for the Petitioners.

Mr. Jagannath J. Mulgaonkar, Advocate for the Respondent No. 1.

CORAM: C. V. BHADANG, J.

RESERVED ON: 13th March, 2019

PRONOUNCED ON: 28th March, 2019

ORDER:

By this petition, the petitioner no. 1, who is the original defendant no. 19 (the petitioner no. 2 has since been transposed as respondent no. 20), is taking exception to the order dated 11.01.2019, passed below Exhibit-18, by the learned District Judge in Regular Civil Appeal No. 90/2017. By the impugned order, the learned District Judge has allowed the application (Exhibit-18), filed by the respondent no. 1 (original appellant) for production of documents under Order XLI, Rule 27 of CPC.

2. The brief facts are that the respondent no. 1 filed a suit claiming 1/3rd undivided share in the suit property, described in the plaint and sought a declaration that the judgment and

order dated 27.10.2003, passed in Inventory Proceedings No. 32/2003 (old no. 151/2000), is null and void, having fraudulently obtained and for consequent declaration that sale deed dated 08.07.2005, executed by the respondent nos. 2 and 3 herein (original defendant nos. 1 and 2) in favour of the petitioner no. 1 and his wife (being original defendant nos. 19 and 20), is null and void and for restraining them from creating third party interest in the same.

3. The original defendant nos. 19 and 20, while resisting the suit, raised an issue of limitation, on the ground that the respondent no. 1/plaintiff was well aware of the filing of the inventory proceedings and had filed an application for intervention in the same and had also raised an objection to the list of assets and thus, the suit filed in July, 2008 was barred by limitation.

4. It appears that the learned Trial Court placing reliance on the admission of PW-1 that the plaintiffs had filed an application in inventory proceedings, upheld the ground of limitation and dismissed the suit, which is subject matter of challenge, at the instance of the respondent no. 1, before the Appellate Court. The respondent no. 1 filed the application

(Exhibit-18), under Order XLI, Rule 27 of CPC, for production of a copy of the complete proceeding sheets of Inventory Proceedings No. 33/2002 (old no. 151/2000), by way of an additional evidence in appeal.

5. The application was opposed on behalf of the petitioners.

6. The learned Trial Court, by the impugned order has allowed the application in the following terms.

“The appellant is permitted to adduce additional evidence.

The Trial Court shall take additional evidence mentioned in the application at Exhibit-18 specified in paragraph (7) therein. The Trial Court shall permit the respondents/defendants to cross examine the plaintiff on the additional evidence. The Trial Court shall also permit the respondents/defendants to adduce evidence in rebuttal relevant to the additional evidence and when the evidence is taken as directed, to sent it to this Court for the purpose of disposal of appeal on merits. The Records and Proceedings of this file shall be sent to the Trial Court for the purpose of enabling the Trial Court to record the evidence.

The parties shall appear before the Trial Court on 21.01.2019 at 10 a.m.”

Feeling aggrieved, the petitioners are before this Court.

7. I have heard Mr. Ramaiya, the learned Counsel for the petitioners and Mr. Mulgaonkar, the learned Counsel for the contesting respondent no. 1. Perused record.

8. Mr. Ramaiya, the learned Counsel for the petitioners submitted that the application for production of additional evidence could not have been allowed, as it has the effect of permitting the respondent no. 1 to fill in the lacuna, in the evidence. It is submitted that the learned Trial Court, acting on the admission of PW-1 has held that the suit was barred by limitation and thus, in order to counter the said finding, the respondent no. 1 cannot now be permitted to produce additional evidence. It is submitted that the same would cause prejudice to the petitioners.

9. Mr. Mulgaonkar, the learned Counsel for the respondent no. 1 has supported the impugned order. It is submitted that a part of the proceedings sheets in the inventory proceedings have already been produced before the Trial Court,

which are collectively exhibited as Exhibit-62-C. It is submitted that it is necessary to produce the complete proceeding sheets, in order to show that the respondent no. 1, has not sought any intervention in the inventory proceedings and was not aware of the same. It is submitted that under Order XLI, Rule 27(b) of CPC, the Appellate Court has wide powers to permit the production of such evidence, if it is necessary to enable it to pronounce judgment or for any other substantial cause.

10. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. The suit filed by the respondent no. 1 has been *inter alia* dismissed on the ground of being barred by limitation. The precise defence taken is that the respondent no. 1 was aware of the inventory proceedings as he had sought intervention and had also objected to the list of assets. It was contended that the inventory proceedings having been decided on 27.10.2003, the suit filed in July, 2008, for declaring the judgment in the inventory proceedings, as null and void, was barred by limitation.

11. Although, the learned Trial Court has placed reliance on the admission of PW-1, Mr. Delano D'Costa, who is the Power

of Attorney holder of the respondent no. 1, who claimed that the respondent no. 1, had filed an application in the inventory proceedings, the Appellate Court has found that the production of the entire record of the inventory proceedings would enable it to ascertain whether, any such intervention was sought and/or an objection was raised to the list of assets. In short, this would enable the learned Appellate Court to decide whether, the respondent no. 1 was aware of the inventory proceedings, which has a material bearing on the issue of limitation. The matter being at the level of the first Appellate Court, all the findings of facts are open. Under Order XLI, Rule 27(b) of CPC, the Appellate Court can allow such production, if the Court requires any such documents to be produced or any such witness to be examined, to enable it to pronounce the judgment and order or for any other substantial cause. Thus, principally, it is on account of the requirement of the Appellate Court, to enable it to pronounce the judgment, that the Court can permit such production. As noticed earlier, a part of the inventory proceedings are already produced on record and exhibited collectively at Exhibit-62-C and no prejudice would be caused to the petitioners, if the production, as claimed by the respondent no. 1, is allowed.

12. The contention that by seeking the production, the respondent no. 1 is trying to fill in the lacuna, also cannot be accepted. A lacuna, which is a fundamental and inherent defect in the case, cannot be equated with inadvertence in producing certain documents, which in the present case, are complete proceedings sheets of the inventory proceedings. It is not the case that any such document, which is subsequently prepared, which is sought to be produced on record, which in a given case, depending upon the facts and circumstances, can be said to be an attempt to fill in the lacuna. Thus, the said contention cannot be accepted.

13. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity so as to require interference. The impugned order, in any event, does not result into any manifest injustice on the petitioners, which is one of the requirements, where interference under the supervisory jurisdiction is warranted (see **Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil (2010) 8 SCC 329**). In that view of the matter, the petition is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

EV