

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 358 OF 2019

1. Shri Ramesh Naik,
34 years of age,
Business, s/o. Late Priti Naik,
Married

2. Smt. Reshma Naik,
Major in age, Housewife,
wife of Ramesh Naik,

Both residents of Flat No.2,
Amrut Nagar, Gogol, Margao,
Salcete, Goa.

3. Smt. Deepali Naik,
Daughter of Late Priti Naik,
Wife of Sadanand Naik,
Major in age, Married,

4. Shri Sadanand Naik,
Major in age, married

Both residents of Santa Cruz
Kurtarkar Nagari Shanti Nagar
Ponda Goa.

5. Smt. Nagama Jamnappa,
Major in age, Widow of Late Priti Naik,
Housewife,

Resident of Chandra Bhuvan Niwas,
Flat No.2 Amrut Nagar,
Gogol Margao, Salcete, Goa.

... Petitioners

V e r s u s

1. Ms. Ratan Priti Naik,
widow of late Priti Naik,
65 years of age

2. Mr. Datta P. Naik,
son of Late Priti Naik, major of age

and his wife,

3. Mrs. Rupa Datta Naik,
wife of Datta Naik,
Major of age

4. Mr. Pradeep P. Naik,
Son of late Priti Naik,
major of age,

all residents of House No.644
New Vaddo, Gogol Margao,
Salcete, Goa.

5. Smt. Shashikila alias Nilima Naik,
Daughter of Late Priti Naik,
Married, major of age,
and her husband

6. Mr. Laxman B. Naik,
major in age,

Both residing at Gadewaddo,
Shiroda, Ponda Goa.

... Respondents

Ms. Susan Linhares, Advocate for the Petitioners.

Mr. C. A. Ferreira and Mr. A. Andrade, Advocates for the
Respondents.

Coram :- C. V. BHADANG, J.

Date :- 29th August, 2019.

ORAL JUDGMENT

1. Rule, made returnable forthwith. The learned Counsel
for the respondents waives service.

2. The challenge in this petition is to the order dated 11.01.2019 by which the evidence of the petitioners-plaintiffs is closed and to the subsequent order dated 25.02.2019, below exhibit 21, by which the application for recall of the order dated 11.01.2019 has been dismissed.

3. On hearing the learned Counsel appearing for the parties, I do find that the petitioner was required to be more diligent in prosecuting the suit. Para 5 of the order dated 25.02.2019 makes it writ large that several adjournments were granted at the instance of the petitioners and normally no exception could have been taken to the Trial Court closing the evidence of the petitioners. However, only to see that a fair opportunity is granted to the petitioners and, in the interest of justice, I find that an opportunity can be granted to the petitioners subject to costs.

4. Ms. Linhares, learned Counsel for the petitioners, submitted that now the petitioners have obtained the certified copies on which the petitioners intend to rely, and shall produce the same on the next date and the petitioner shall positively lead evidence without fail.

5. In such circumstances, the following order is passed:

ORDER

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside subject to the petitioners paying costs of Rs.25,000/- to the respondents within two weeks from today.
- (iii) The deposit/payment of costs is a condition precedent for the petitioners being permitted to lead evidence.
- (iv) On deposit of the costs, the petitioners shall be permitted to lead their evidence.
- (v) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

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