

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 669 OF 2019**

1. Smt. Gulabi Tukaram Palkar,
Wife of lateTukaram Palkar,
aged 56 years, service and anr. Petitioners

V e r s u s

1. Shri Yogish J. Palkar,
son of Shri Janardhan Palkar,
aged 35 years, married, business,
Resident of House no.635,
Palem, Siridao, Tiswadi, Goa and
anr. Respondents.

Adv. Arjun F. Naik for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 25th September, 2019.

Oral Order:

Heard Mr. Naik, the learned counsel for the petitioner for some time.

2. The challenge in this petition is to the order dated 24/10/2018 and 3/5/2019 passed by the learned Civil Judge, Junior Division at Panaji in Regular Civil Suit no.19/2016/D. By the order dated 24/10/2018, an application (Exhibit D-29) filed by the petitioner/plaintiff for amendment of the plaint has been dismissed, while by the second order dated 3/5/2019, an application for permission to lead 'secondary evidence' has been dismissed.

3. The brief facts are that, the petitioners have filed the aforesaid suit against the respondents for a declaration that they are in lawful possession of the suit property and for permanent injunction restraining the respondents or anybody on their behalf, from interfering with the same. It is a matter of record that the respondents filed their written statement on 16/3/2015 and a copy of the written statement was obtained by the petitioners on 22/4/2015. In the said written statement, the respondents placed reliance on a sale deed dated 13/12/2001 and a Deed of Rectification dated 13/12/2004 claiming right, title and interest in the suit property.

4. Indisputably, the issues have been framed in the suit. However, the petitioner has not yet started his evidence. At this stage the petitioner filed an application (Exhibit D-29) for amendment of the plaint by addition of paras 21(a) to 21(f) and addition of prayer clause “aa”. In short, the petitioner wants to introduce a claim for declaration that the sale deed and the Rectification Deed are illegal having been fraudulently executed and they are null and void and they be canceled.

5. The learned trial court has dismissed the said application by the order dated 24/10/2018 inter alia on the ground that the proposed amendment is barred by limitation, in as much as the petitioners were made aware of the

existence of the sale deed and the Rectification deed when the written statement was filed on 16/3/ 2015.

6. Mr. Naik, the learned counsel for the petitioner at this stage submits that he will not press for the challenge to the said order dated 24/10/2018 as the petitioner intends to take appropriate remedy in respect of the said sale deed and the Rectification Deed as may be available in law. Thus the challenge only survives in so far as the order dated 3/5/2019 is concerned, by which the application for production of secondary evidence is rejected.

7. On hearing the leaned counsel for the petitioner it appears that all that petitioner wanted is to produce the copy of the assessment register issued by the Village Panchayat in pursuance of an application under the Right to Information Act on record and to prove the same. This cannot strictly be termed as a secondary evidence. Thus the petitioner would be at liberty to file appropriate application for production of the certified copy of the assessment register and to examine the concerned witness from the Village Panchayat to prove the same. If such an application is filed, the trial court shall pass appropriate orders in accordance with law. Subject to this, the petition is disposed off. Needless to mention that this Court has not expressed any opinion on the availability, maintainability or merits of the challenge to the

sale deed and the Rectification deed.

C. V. BHADANG, J.

Ap/-