

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1068 OF 2018**

1. Shri Devanand Shiva Kudnekar,
Major, bachelor, H. No. not known
r/o Muddavado, Saligao,
Bardez, Goa.

2. Mrs. Kundan Kudnekar,
w/o Devanand Kudnekar,
r/o Muddavado, Saligao,
Bardez, Goa.

..... Petitioners

V e r s u s

1. Shri Damodar Sitaram Kerkar,
Major, married, businessman,
H. No.2/8, Muddavaddo,
Saligao, Bardez, Goa
(since deceased)
Through his legal representatives/heirs

a) Smt. Chitra Damodar Kerkar,
Major of Age,
housewife,

b) Mr. Kapil Damodar Kerkar,
Son of late Shri Damodr S. Kerkar,
Major of age, unmarried,

c) Miss. Kanikar Damodar Kerkar,
Daughter of late Shri Damodar S.
Kerkar,
Major of age, unmarried,
All residents H No.3/9,
Muddavado, Saligao,
Bardez, Goa.

..... Respondents.

Adv. Parag S. Rao, with Adv. Ms. S. Rao and Adv. F. Gomes for the
Petitioners.

Adv. Amay Phadte for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 27th June 2019.

Oral Judgment:

Rule, made returnable forthwith. The learned counsel for the respondents waives service. Heard finally by consent of parties.

2. The challenge in this petition is to the order dated 24/7/2017 and the order dated 4/10/2018 passed by the learned trial court in Regular Civil Suit No.173/2005/D. By the order dated 24/7/2017, the cross examination on behalf of the petitioners/defendants, of the respondent's witness has been closed and by the subsequent order dated 4/10/2018, the application (Exhibit 89) for recall of the earlier order has been dismissed.

3. On hearing the learned counsel for the petitioners and on perusal of the record, it appears that on 3/7/2017 and 5/7/2017 time was sought on behalf of the respondent to lead evidence which was granted and the suit was fixed on 24/7/2017, on which date time was sought on behalf of the petitioners to cross examine the witness of the respondent on the ground that the advocate was in difficulty. The learned trial court refused to grant time and closed the cross examination. Subsequently the petitioners filed application (Exhibit 89) which was dismissed on 4/10/2018 mainly on the

ground that the suit is more than ten years old. Ironically the record shows that although the trial court was rightly concerned for the expeditious trial of the suit, the application (Exhibit 89) which was filed on 24/7/2017 was decided by the trial court more than a year thereafter on 4/10/2018. Be that as it may, I find that from the record, the trial court ought to have granted reasonable opportunity to the petitioners to cross examine the witness of the respondent. This is not a case where there were repeated adjournments which were sought for cross examination of the concerned witness. Considering the overall circumstances, the petition is allowed. The impugned orders are hereby set aside. The learned trial court shall recall the witness PW.1 for cross examination on behalf of the petitioners. The parties to co operate for expeditious disposal of the suit. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

ap/-