

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1087 OF 2018

**CELINA FERNANDES E RODRIGUES AND
ANR.,**

... Petitioners

Versus

ASUMPTA R. A. FERNANDES AND ANR.,

... Respondents

Mr. A.F. Diniz with Mr. Ryan Da Piedade Menezes, Advocates
for the Petitioners.

Mr. Jagannath J. Mulgaonkar, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 16th August, 2019

ORAL ORDER:

The challenge in this petition is to the order dated 06.10.2018, below Exhibit D-76, passed by the learned Senior Civil Judge at Margao in Regular Civil Suit No. 280/2010/A [Special Civil Suit No. 25/2009/A (old)]. By the impugned order, an application (Exhibit D-76), filed by the respondents (defendants) for production of certain documents has been allowed, subject to costs of Rs.1,000/-.

2. I have heard Mr. Diniz, the learned Counsel for the petitioners and Mr. Mulgaonkar, the learned Counsel for the respondents. Perused record.

3. Mr. Diniz, the learned Counsel for the petitioners has submitted that the application (Exhibit D-76) is not relatable to Order XVIII, Rule 17 of the Civil Procedure Code (CPC, for short). It is submitted that the evidence of the petitioners is nearing completion. Secondly it is contended that except the document at serial no. (i) i.e. Public Will dated 02.04.2001, the rest of the documents, which are the certified copies of the communication by Ms. Luiza Fernandes with the Village Panchayat and other Government Authorities, cannot be said to be public documents, as has been held by the learned Trial Court in the impugned order. Thirdly, it is submitted that there is gross delay in producing the documents, which is unexplained. The learned Counsel has referred to the affidavit in examination in chief of the defendant no. 2, in order to submit that there is nothing in the said affidavit, which could prompt the respondents to make an inquiry and then seek production of the said documents.

4. Mr. Mulgaonkar, the learned Counsel for the respondents has supported the impugned order. He, however, did not dispute that the application cannot be said to be under Order XVIII, Rule 17 of CPC. It is submitted that the application (Exhibit D-76) ought to be considered under Order XVIII, Rule 16(3) of CPC. It is submitted that the learned Trial Court has rightly found that the delay on the part of the respondents cannot be the only

ground to disallow the production of the documents.

5. I have considered the circumstances and the submissions made. At the outset, it is necessary to note that the learned Counsel for the petitioners, in all fairness, did not dispute that the Will is a public document and therefore, did not object to the production of the said Public Will. The objection is basically to the documents at serial nos. (ii) to (xviii), which are part of the correspondence made to the various Government Authorities. The learned Counsel for the petitioners is right in contending that merely because the certified copies of these documents are given by the Government Authorities, these documents cannot be said to be public documents under Section 74 of the Evidence Act. However, that alone may not be sufficient, at this stage, to refuse the production of the documents. In that view of the matter, no case for interference is made out, at this stage. However, the petitioners are at liberty to challenge the impugned order, in an appeal against the decree that may be passed in the suit, if it is adverse to the petitioners. The Petition is accordingly disposed off, with no order as to costs, with liberty as aforesaid.

C. V. BHADANG, J.