

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1204 OF 2018**

1. Mr. Alex Agnel Augustinho Rodrigues,
Son of late Andrew Joao Pascoal
Rodrigues Aged 72 years, retired,
Widower, Residing 16 Boston Gardens,
Brentford, Middlesex TW8 9LW,
England.
2. Mr. Bosco Bonifacio Conceicao
Rodrigues Aged about 71 years, Son of
late Andrew Joao Pascoal Rodrigues,
Retired, married and his wife
3. Mrs. Maria Rita Elizabeth Rodrigues
Aged about 68 years, Daughter of
Anthony Francis D'Souza Retired,
married, Both residents of 9 Eswyn
Road, Tooting, London SW17 8TR,
England.
4. Mr. Anthony Cyril Roque Rodrigues
Aged about 68 years, Son of late
Andrew Joao Pascoal Rodrigues
Retired, married, and his wife
5. Mrs. Lucy Fatima Conception
Rodrigues, Aged about 67 years,
Daughter of Anthony Fernandes,
Retired, married,
Both residents of 11, Sparrow Farm
Road, Stoneleigh, Surrey KT16 2JJ,
England.
6. Mr. Francisco Xavier Tarasius
Rodrigues, Aged about 66 years, Son
of late Andrew Joao Pascoal Rodrigues
Retired, divorced, Resident of 86,
Wilson Avenue, Mitcham, Surrey CR4
3JL, England.

Petitioners at Serial Nos. 2 to 6 are represented herein by their constituted attorney Mr. Alex Angel Augustinho Rodrigues. Plaintiff no.1 vide Power of Attorney executed on 8th February

2012 before the Assistant Consular Officer, High Commission of India, London and Adjudicated by the Additional Collector, South Goa, Margao on 24/02/2012.

7. Mr. Jude Fortunato Rodrigues, Aged 53 years, Divorcee, Service, Son of late Conceicao Miguel Queteria da Piedade Rodrigues alias Conceicao Miguel Rodrigues.
8. Mrs. Rowena Lucy Eugenia Philomena Rodrigues alias Rowena Johnson alias Roweena Johnson aged 74 years, widow, Daughter of late Conceicao Miguel Quiteria da Piedade Rodrigues alias Conceicao Miguel Rodrigues. Both r/o 8C, Basant Mahal, Antop Hill, Wadala (E), Mumbai.

Petitioner at Serial Nos. 7 and 8 are represented herein, by their constituted attorney Mrs. Maria Fanny Carmel Sabina Rodrigues. Plaintiff no. 9, vide two Power of attorney's Both executed on 16/06/2009 before the Notary Hemant Jangam at Mumbai.

9. Mrs. Maria Fanny Carmel Sabina Rodrigues alias Maria D'Souza, Daughter of late Mr. Conceicao Minguel Rodrigues, married, Resident of Flat No.3, 2nd Floor, Prabhu Building, Dockyard Road, Mazagao, Mumbai.

.... Petitioners

Versus

1. Mr. Oswald Rodrigues (since deceased) aged about 80 years. Son of late Joao Francisco Rodrigues Occupation-retired, married And his wife. Represented through LR's
- 1(a) Mr. Francis Arminio Rodrigues son of late Oswald Rodrigues major in age, married, and his wife,
- 1(b) Mrs. Nimrata Chadha Rodrigues major

in age, married, both r/o 17 Priory Park, Coosan, Athlone, County Westmeath, Republic of Ireland.

- 1(c) Mrs. Cheryl Lourdes Rodrigues Falcao daughter of late Oswald Rodrigues major in age, married, and her husband,
- 1(d) Mr. Jose Maria M. C. Vaz Falcao major in age, married, both r/o 27 Mohawk Path, Holliston, Boston, MA01746, U.S.A.
- 1(e) Mr. Alistair Joseph Rodrigues son of late Oswald Rodrigues major in age, married and his wife,
- 1(f) Mrs. Rexcy Coutinho Rodrigues major in age, married, both r/o 3rd Floor, Manohar Bldg. Next to Infant Jesus Maternity Hospital CupanGally, Agalli, Fatorda, Salcete, Goa 403 602.
2. Mrs. Alina Rodrigues aged about 69 years, Medical Practitioner, married, Both residents of Old Market, Opp. Trial Court, Margao Goa.
3. Mr. Arminio Rodrigues aged about 78 years, Son of late Joao Francisco Rodrigues Occupation- Business, married and his wife,
4. Mrs. Palmira Rodrigues, aged about 63 years, Teacher, married, Both residents of Old Market, Opp. Trial Court, Margao Goa.
5. Mr. Nelson Vivian Anthony Rodrigues alias Nelson Rodrigues aged about 76 years, Son of late Joao Francisco Rodrigues Occupation-Accountant, married and his wife,
6. Mrs. Maria de Graca Efigenia Pereira e Rodrigues alias Grace Rodrigues aged about 66 years, Teacher, married, Both residents of 991, Ceremonial Drive, Mississauga, Ontario, Canada, (L5R 2Z8).

7. Mrs. Silvia Joanes Daughter of late Joao Francisco Occupation-Retired, married, and her husband,
8. Mr. Olavo Pedro Joanes, retired, Both residents of 238 Harrow Smith drive, Mississauga, Ontario, Canada, L5R 1R2.
9. Mrs. Yvonne Costa Pereira, Daughter of late Joao Francisco Rodrigues aged 75 years, housewife, married and her husband,
10. Mr. Joe Costa Pereira, retired, aged 84 years, Both residents of Dr. C. P. Building, 1st floor, Near Municipality Garden, Margao, Goa.
11. Dr. Otilia Masarenhas Daughter of late Joao Francisco Rodrigues, aged 73 years, occupation Doctor, Married and her husband,
12. Mr. Ricardo Mascarenhas aged 83 years, Occupation Doctor, Both residents of Villa Fatima, Saunta Vaddo, Calangute, Goa.
13. Mrs. Queenie D'Souza, Daughter of late Joao Francisco Rodrigues, 71 years of age, Occupation Nurse, Married and her husband,
14. Mr. Anthony D'Souza, aged 83 years, Both residents of 32, Russel Close, Bexley Health, Kent DA7 4HX, UK. Respondents

Mr. Somnath Karpe, Advocate for the Petitioners.

Mr. C.A. Ferreira, Advocate for Respondent No. 2.

Mr. V.G.P. Duple, Advocate for Respondent Nos. 3 and 4.

CORAM : C.V. BHADANG, J.

DATE : 27th August, 2019

ORAL JUDGMENT:

Rule made returnable forthwith. The learned Counsel for the contesting respondents, waive service. Heard finally by consent of parties.

2. The challenge in this petition is to the order dated 13.11.2018, passed by the third Additional Adhoc Senior Civil Judge at Margao in Special Civil Suit No. 49/2012, by which, the learned Trial Court, while refusing an adjournment, has closed the evidence of the petitioners/plaintiffs.

3. The learned Counsel for the petitioners states that most of the petitioners are staying abroad and on account of preoccupation of the petitioner no. 1, who is looking after the suit, he could not remain present. The learned Counsel for the petitioners states that the petitioners shall positively lead evidence on the next date and are ready and willing to pay costs as may be directed by this Court.

4. Mr. Duple, the learned Counsel for the respondent nos. 3 and 4 has urged that the adjournment was sought on the ground which was false to the knowledge of the petitioners. The learned Counsel has referred to evidence of petitioner no. 1

in Special Civil Suit No. 733/2010, in which, the petitioner no. 1 has stated that he has retired from service with the Birtish Airways in the year 2006. The learned Counsel has also pointed out para 23 of the petition, in which, the petitioners have stated that due to their employment abroad, they are not available in India. In the submission of the learned Counsel for the respondent nos. 3 and 4, this statement is false to the knowledge of the petitioners.

5. Mr. Ferreira, the learned Counsel for the respondent no. 2 has also supported the impugned order on similar grounds.

6. I have carefully considered the rival circumstances and the submissions made. It hardly needs to be stressed that the suit of the year 2012, requires to be proceeded with expedition. It is also a matter of record that prior to passing of the impugned order, twice time was granted to the petitioners to lead evidence. However, considering the overall circumstances and for fair trial and in the interest of justice, an opportunity needs to be granted to the petitioners to lead evidence, subject to payment of costs. I have gone through the contents of para 23 of the petition. In para 23, the petitioners

have also stated that one of the petitioners, who is in India on account of her knee surgery was unable to move out of her house, who is based in Mumbai.

7. Thus, having regard to the overall circumstances, the following order is passed:

O R D E R

- (i) The Petition is allowed.
- (ii) The impugned order is hereby set aside, subject to the petitioners paying costs of Rs.40,000/- to the contesting respondent nos. 2, 3 and 4, within three weeks from today.
- (iii) The petitioners shall positively lead evidence on the next date of hearing of the suit or on the date to which, the learned Trial Court adjourns the suit.
- (iv) The petition is disposed off in the aforesaid terms.

C. V. BHADANG, J.

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