IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.803 OF 2019

Celina Velho e Almeida ... Petitioner

Versus

Jose Aleixo De Vieira Velho
(dec.) through LR's ... Respondents

Shri Gaurish Agni, Advocate for the Petitioner.
Shri C. Padgaonkar, Advocate for the Respondents.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 21 October 2020

ORAL ORDER:

The parties are siblings. The parents had four daughters and one son. The daughters got married and started living in their respective matrimonial houses. The son continued to be with the parents, who had properties. To have those properties managed, the parents allegedly executed a General Power of Attorney in their son's favour. And that has led to the litigation.

2. Much depends on the genuineness or the validity of the GPA. So only for the narrative purpose, I will refer to the GPA as if it were valid. Of course, its authenticity and validity are matters of proof before the trial Court.

3. If we indulge in a bit of chronology, I may note that the petitioner, one of the four daughters, got married in 1975 and left the parental home then. On 13.05.1984, the parents executed the Power of Attorney in the son's name. Again, in April 1986, the son secured another Power of Attorney. In April 1994, when the mother was ill, the petitioner, one of the daughters, visited the parental home and

came to know that the parents had executed a Power of Attorney and appointed her brother as their attorney.

4. In May 1994, the petitioner filed Special Civil Suit No.98/1994 (renumbered as Special Civil Suit No.363/2000) before the Civil Judge, Junior Division, Panaji. In that suit, the petitioner pleaded that her father, then 75 years old, had been mentally incapacitated. So the Power of Attorney got vitiated. Pending that suit, the father passed away in September 1998.

5. As a matter of further development, in July 1999, the plaintiff received a demand notice from the Co-operative Bank, requiring her to repay the loan the parents obtained through the Power of Attorney agent. Then, the petitioner realised that her brother actually used the Power of Attorney and created liability over the property. Later, in December 2004, the mother too passed away.

6. At any rate, having come to know about the loan, in March 2007, the petitioner secured a copy of the Power of Attorney from the Bank and realised that the father did not execute it. Therefore, she sent that copy of Power of Attorney and supplementary documents containing the father's signature to a handwriting expert named Harish Gujjar. In October 2007, the petitioner secured the expert's report along with the supporting documents. She filed before the Court the copies of the report and the accompanying documents. Three years later, in July 2010, the petitioner deposed as PW1, and her examination in chief was recorded. This chief-examination process continued from 2010 to 2018! Finally, between April 2018 and December 2018, the petitioner's cross-examination completed.

7. In the meanwhile, the handwriting expert passed away. Therefore, the petitioner felt that she could not use the report given by him. Then, in September 2009, the petitioner secured another report from yet another handwriting expert—Firoz Shaikh. In January 2019, the petitioner served an advance copy of the second expert's affidavit-in-chief on the defendant's counsel. But the petitioner did not actually seem to have filed it in the Court.

8. That said, before the trial Court could examine the second expert, the petitioner realised that some of the original documents forming part of that expert's report had been misplaced and could not be produced as primary evidence. So once again, the petitioner supplied another set of documents to the expert and secured a second report from the second expert. Thus, the petitioner had three reports: one from Harish Gujjar and two from Firoz Shaikh.

9. On 09.04.2019, the petitioner applied to the trial Court for its leave to produce the expert's report, dated 22.03.2019, along with the copies of the supporting documents. The respondents opposed it. Through an order, dated 29.06.2019, the trial Court permitted the petitioner to file the supporting document. Still, it refused to take Firoz Shah's second report because his first report had already been on record, marked as exhibit-X. Aggrieved, the petitioner has filed this Writ Petition.

Submissions:

Petitioner:

10. In the above factual backdrop, Shri Gaurish Agni, the learned counsel for the petitioner, has strenuously contended that the trial Court ought to have accepted all the documents in their entirety as offered by the petitioner. According to him, the petitioner has a

genuine apprehension that the defendants may object during the expert's cross-examination: the second report filed earlier, and the documents now placed on record are unconnected. Therefore, according to the learned counsel, the third report, which is the second report's replica, must have been taken on file along with the documents as they make a composite whole. He has also stressed that this arrangement would not have prejudiced the documents.

11. On the other hand, Shri C. Padgaonkar, the learned counsel for the respondents, contends that the procedure the petitioner wanted to adopt is unknown to law. At any rate, he has pointed out that the trial Court has been indulgent enough in allowing the petitioner to file the report as well as the documents, though all are *post-litem* documents. In the end, the learned counsel has pointed out that merely because the trial Court has permitted the petitioner to file the report and documents on record, it does not mean that they stand proved. He wants this Court to dismiss this Writ Petition leaving it for the parties to advance all their arguments about the validity of the documents the petitioner has brought on record and their relevance.

12. Heard Shri G. Agni, the learned counsel for the petitioner; and Shri C. Padgaonkar, the learned counsel for the respondents.

13. First, I must remember that I am considering a writ petition under Article 227 of the Constitution of India. I am tasked with, pure and simple, keeping the trial Court within its jurisdictional bounds by exercising this Court's power of superintendence. Article 227 is no licence to upset every decisional applecart I come across. I am not exercising appellate jurisdiction, which is corrective. On the contrary, the supervisory jurisdiction is regulatory. The High Court

supervises, for instance, the subordinate court's adjudicatory powers only to ensure that the court below neither arrogates to itself the jurisdictional powers it does not possess nor abdicates those it has. Nothing more. Parliament has cut down the revisional scope under Section 115 of CPC with an objective—a laudable objective of speedy justice, at that. And, in that context, the supervisory jurisdiction is no terminator. It ought to be used as sparingly as possible—only when the interest of justice suffers. Agreed, this concept of "interest of justice" is nebulous, but nebulousness is a virtue, not a vice. After all, doing justice is not solving Archimedean arithmetic—precise, predictable, and invariable under all circumstances.

14. Granted justice is no cloistered virtue, but it is a compendious name to myriad decisional dynamics—legal, ethical, social, cultural, moral, emotional. But once a competent court has decided an issue, it takes more than an 'alternative view' or even a 'better view' for this Court to interfere. Illegality must be writ large and miscarriage of justice certain.

15. Here, I see no such eventuality. The trial Court has noted that the plaintiff desired to produce the expert report, which she has already produced when she deposed as a witness. Before the trial Court, the defendant's counsel had no objection "if said documents are taken on record as already the report of the said expert is on record". In fact, earlier the petitioner had been subjected to cross-examination based on "the expert report already produced". So the trial Court permitted the petitioner to produce the documents but not the report, for it has already been on record.

16. The petitioner's apprehension that later she might face an objection about, presumably, the secondary nature of the report, I must note, lacks substance.

Under these circumstances, I see no reason for me under Article 227 of the Constitution to interfere with the trial Court's order.

DAMA SESHADRI NAIDU, J.

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