

IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No.196/2011

Shri Vilas Vaikunth Sardesai

a) Mrs. Lata Vilas Sardesai
w/o of Late Shri Vilas Sardesai
aged 71 years, housewife.

b) Mrs. Roma Abhay Nachinolkar
d/o of Late Shri Vilas Sardesai
w/o Mr. Abhay Nachinolkar
aged 40 years, service.

c) Mr. Abhay Nachinolkar
S/o Mr. Visrama Nachinolkar
Aged 40 years, advocate.

All r/o H. No. 18/108/39,
Vodlem Bhat Behind Priority
Honda Showroom,
Taleigao Tiswadi Goa

... Petitioners

Versus

1. Smt. Pritabai Suryakant Shetgaonkar,
Major of age, R/o Gaonkarwado,
Narva, Bicholim - Goa. 403504.

2. Shri Prasad S. Shetgaonkar,
Major of age, R/o Gaonkarwado,
Narva, Bicholim - Goa. 403504.

3. Shri Laxman S. Shetgaonkar,
Major of age, R/o Gaonkarwado,
Narva, Bicholim - Goa. 403504.

4. Shri Ramchandra Narbarao Sardesai,
Major in age, Residing near Anant temple,
Savoiverem, Ponda – Goa.

... Respondents

Mr. Gaurish Agni, Advocate for the Petitioner.

Mr. S. Kamat Malyekar, Advocate for the Respondents No.1 & 3.

Coram:- M.S. SONAK, J.

Date:- 4th February 2021

JUDGMENT:

Heard Mr. Gaurish Agni for the Petitioner and Mr. S. Kamat for the Respondents.

2. The challenge in this petition is to the order dated 04.08.2010 made by the Deputy Collector and SDO, Bicholim rejecting the petitioner's application for production of addition evidence/documents in appeal.

3. The record indicates that the respondents herein were declared as tenants in respect of the suit property by the Mamlatdar. The petitioners herein applied for leave to appeal against the order of the Mamlatdar basically on the ground that it is the petitioner, now deceased, who was the owner of the suit property. Such leave was granted and the appeal was entertained.

4. Thereafter, the petitioner applied to the Appeal Court for leave

to produce additional evidence/documents of title on record to establish his ownership to the suit property.

5. By the impugned order dated 04.08.2010 this application has been dismissed.

6. Now in *Union of India v. Ibrahim Uddin and another – (2012) 8 SCC 148* in paragraph 52, this is what has been held in the context of applications under Order 41 Rule 27 of the Code of Civil Procedure relating to production of evidence at the appeal stage:

“Thus, from the above, it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.”

7. Though, these are not the proceedings before a Civil Court, unless repugnant, the principles as aforesaid will have to be adopted and followed.

8. Accordingly, the impugned order dated 04.08.2010 is set aside and the Appeal Court is directed to take up the application for production of additional evidence/documents at the stage of final hearing of the appeal itself. This means that the application made by the petitioner will have to be considered at the stage of final hearing of the appeal in terms of the law laid down by the Hon'ble Apex Court in the aforesaid matter.

9. The Rule is made absolute in the aforesaid terms. There shall be no orders as to costs.

10. The interim relief, if any, of stay of the proceedings is hereby vacated.

11. Parties to appear before the concerned Deputy Collector on 08.03.2021 at 10.30 a.m. Further, the Appellate Court is directed to dispose of the appeal as expeditiously as possible.

12. All concerned to act on the basis of an authenticated copy of this Order.

M. S. SONAK, J.