

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 153 OF 2021

1. Prabhakar Krishna Gaonkar & anr.	...Petitioners
<i>Versus</i>	
1. Harichandra Radyo Gaonkar & 3 Ors.	...Respondents

Mr. A. D. Bhobe *and* **Ms. Annelise Fernandes**, *Advocates for the Petitioners.*

CORAM: MANISH PITALE, J
DATED: 13th September 2021

ORAL ORDER

1. By this Writ Petition, the Petitioners (Original Plaintiffs), have challenged the order dated 02.02.2021, passed by the Court of Civil Judge, Junior Division, Sattari at Valpoi, whereby, during the course of recording of evidence, the said Court has taken on record certain documents and instead of marking them as exhibits, it has directed that they shall be simply marked as 'X' and 'Z', subject to proof.

2. The learned Counsel for the Petitioner contends that such course of action adopted by the Court below was erroneous, particularly when the documents so marked were notarized copies of Form I and XIV of certain survey numbers relevant to the controversy in the suit, certified copies of which were also kept for the perusal of the Court below.

3. This Court had issued notice and granted interim stay of the proceedings before the Court below. The Respondents have

been served and they have chosen not to appear before this Court to contest the present Petition.

4. A perusal of the impugned order shows that the Court below itself has recorded that certified copies were indeed produced by the Petitioners and that the notarized copies thereof were taken on record and the certified copies were returned without verification or looking into the same. It appears that the Court below has not commented upon the genuineness of contents of the said documents and rightly so, because at the stage at which the impugned order was passed, the only question was as to whether the notarized copies could be marked as exhibits. It is well settled law that merely marking of documents as exhibits would not amount to proof of the contents thereof and the same would have to be proved in accordance with law.

5. That being the position of law, there was no impediment for the Court below to have marked the copies as exhibits, subject to the Petitioners producing certified copies during the course of proving the contents of the said documents. The Court below could have recorded an undertaking in that regard and the notarized copies could have been marked as exhibits.

6. The learned Counsel for the Petitioner submits that the Petitioners are fully prepared to furnish such an undertaking before the Court below and that, therefore, the present Petition deserves to be allowed.

7. As noted above, the Respondents have chosen not to contest the present Petition, despite service of notice and, therefore, this Petition has been taken up for final disposal.

8. In view of the above, the Writ Petition is allowed. The impugned order is set aside and instead, the Court below is directed to mark the notarized copies of the said documents as exhibits, subject to proof of the contents thereof in accordance with law and the Petitioners furnishing an undertaking before the Court below that as and when, during the further proceedings in the suit, the Court below requires certified copies, the same shall be produced by the Petitioners.

9. The Writ Petition is disposed of. The undertaking be furnished within a period of two weeks from today before the Court below.

MANISH PITALE, J.