

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 18 OF 2021

GANESH PANTA GAONKAR
AND ANR

.... Petitioners.

VS

SATU SANVLO GAONKAR
AND ANR

..... Respondents.

Shri C. A. Coutinho and Shri I. Santimano, Advocates for the petitioners.
Shri A. Bhobe and Ms. A. Fernandes, Advocates for the respondents.

Coram: - DAMA SESHADRI NAIDU, J.

Date: -1st February 2021.

PC.

The respondents are the plaintiffs in Regular Civil Suit No. 44/2012/B before the Civil Judge, Junior Division, at Quepem, Goa. They have filed the suit for perpetual and mandatory injunctions, besides other consequential reliefs.

2. The petitioners in this Writ Petition are the defendants.

3. If we look at the chronology, the respondents filed the suit in 2012; the petitioners filed their written statement in the same year—to be precise, in December. In 2018, the petitioners amended the written statement. In the course of time, the respondents, as the plaintiffs, completed their evidence; and now the suit stands posted for defendants' evidence. At that juncture, the petitioners applied under Order 8 Rule 1A of CPC to bring on record certain additional documents. They are the birth and death certificates of those who are said to be the petitioners' ancestors. When the trial Court rejected the application, the defendants have filed this Writ Petition.

4. Shri Coutinho, the learned counsel for the petitioners, has submitted that after the amendment in 2002, Rule 1 A of Order 8, CPC, makes it easy for the defendants to bring on record additional documents. They only need to seek the court's leave. According to him, the documents the petitioners sought to bring on record are the public documents and their production only elucidates a point in controversy—that is, the defendants' line of succession.

5. To elaborate on his submission, Shri Coutinho has fairly submitted that the application under Order 8 Rule 1A of CPC may have been cryptic, but it has laid the foundation why the documents must be brought on record. Therefore, the trial Court ought to have exercised its discretion in the defendants' favour. He has also pointed out that the defendants' evidence has not yet begun. So, once these documents are brought on record, the plaintiffs will have every opportunity to cross-examine the defendants about those documents. He has, thus, urged to this Court to allow the Writ Petition.

6. On the other hand, Shri Bhobe, the learned counsel for the respondents/plaintiffs, has submitted that the defendants filed the written statement in December 2012. Later, they amended the pleadings in 2018, but until 2020 the defendants did not deem it fit to bring on record the documents they reckon to be very essential.

7. Placing reliance on this Court's judgment in *Navindchandra Khimchand Shaha v. Putco Pvt. Ltd.*, decided on 26.7.2019¹, Shri Bhobe submits that under identical circumstances, this Court has held that belated production of the documents without justification should not be countenanced.

8. Heard Shri C. A. Coutinho, the learned counsel for the petitioners; and Shri A. D. Bhobe, the learned counsel for the respondents.

9. Facts are not disputed. The suit has been pending for over eight years, and the written statement, too, was filed about eight years ago. The documents now sought to be brought on record are no doubt public documents. But law does not give any liberty to either party to bring on record those public documents at any time of the proceedings.

10. Agreed, under Rule 1A of Order 8, CPC, the defendants need to have the court's leave to bring on record any additional documents. If we examine the application the defendants filed for bringing those documents on record, it simply states that "the documents which defendants seek to produce on record are highly essential for deciding issue in controversy"

11. As contended by the respondents' counsel, there is no specific foundation in the pleadings about these documents now sought to be brought on record. That said, the defendants want to establish before the trial Court that their ancestors have 1/8th share in the disputed property, and the person whose name has been recorded in matríz is their ancestor. According to them, these documents would show the lineage.

12. A document may be very relevant. But once the party finds no justification for its belated production, the scope for this Court's interference is constricted—especially when the trial Court on the merits has refused to take them on record. I reckon the trial Court has been judicious in its discretion.

13. Here, I see no perversity in trial Court's refusing to take on record documents the defendants have all along been aware of. They have not, first, pleaded about them in the written statement. Nor have they provided any justification in the application under Rule 1A of Order 8 when they could not produce them on time. In fact, they were available even before the defendants had filed their written statement. Nothing prevented them from placing those documents on record.

14. Therefore, I am disinclined to interfere with the impugned order. That said, before parting, I may note that as the defendants'

evidence is yet to begin, they have more than one way to establish the lineage by leading appropriate evidence before the trial Court.

Writ Petition stands disposed of accordingly.

DAMA SESHADRI NAIDU, J.

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