

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.203/2021

DIONISIO SEBASTIAO
CARDOZO (DEC) THR. HIS LR.s.

... Petitioners

Versus

PROCURADOR DE
COMMUNIDADE DE
BAMBOLIM AND ANR.

... Respondents

Mr. Gaurish Agni, Advocate for the Petitioners.

Coram:- M.S. SONAK, J.

Date:- 6th July 2021

P. C.:

Heard Mr. Agni for the petitioners.

2. The challenge in this petition is to the order dated 15.02.2021 made by the Additional District Judge-1, North Goa, Panaji (Appeal Court).

3. In this case, the Appeal Court, appointed a Commissioner for identification of the property involved in the matter. The Commissioner has submitted the report. The appellant through his advocate made a statement that the appellant is in agreement with the

report and the plan prepared by the Commissioner.

4. The Court has called upon the Commissioner to depose in this matter so that the party, that has objections to the Commissioner's report gets an opportunity to cross-examine the Commissioner on the correctness or otherwise of the report submitted. Accordingly, the petitioners herein, who were the respondents before the Appeal Court were granted opportunity to cross-examine the Court Commissioner.

5. At this stage, the petitioners contended that the appellant before the Appeal Court, who was otherwise agreeing with the Commissioner's report should either cross-examine the Commissioner first or forfeit the right of cross-examination or further examination. It is this contention which was turned down by the Appeal Court vide order dated 15.02.2021.

6. Mr. Agni, the learned counsel for the petitioners submits that the aforesaid situation is akin to a situation where some of the defendants supported or agreed with the contention of the plaintiff. He submits that in such a situation such defendants are required to first cross-examine the plaintiff or plaintiff's witnesses before the contesting defendants can be called upon to cross-examine. He submits that if such a course of action is not adopted then, an undue opportunity will be claimed to plug the loop holes which the contesting defendant is

able to demonstrate in pursuance of his cross-examination. Mr. Agni states that he is in a position to circulate judgments in support of this contention.

7. According to me, the analogy suggested by Mr. Agni is not quite apposite in the facts of this case. Therefore, even though there can be no dispute with the proposition advanced, such a proposition will really not apply to the peculiar fact situation of the present matter.

8. This is a case where the Commissioner was appointed by the Court. The appellants before the Appeal Court made a statement that they agree with the Commissioner's report and the plan prepared. In such a situation, there was no point in insisting that the appellants before the Appeal Court cross-examine the Commissioner in the first instance. Since, it is the petitioners who had objections to the Commissioner's report and the plan prepared, the petitioners, as a measure of fairness and consistent with the principles of natural justice, were offered an opportunity to cross-examine the Court Commissioner. It is necessary to note that the Court Commissioner was not some witness on behalf of any of the parties. Rather, in this case, the Court Commissioner, was appointed by the Court to assist it in the proper identification of the suit property and effectively dispose of the appeal before it. Therefore, the analogy suggested by Mr. Agni, would not apply to a case of this nature.

9. The learned Trial Judge has only held that should there be any discrepancies in the deposition of the Commissioner or should any clarifications be necessary, the original appellants, can always be granted an opportunity of re-examination. Having regard to the fact that the Court Commissioner was not some witness being examined by the parties and the examination of such Court Commissioner was basically an exercise in compliance with the principles of natural justice, it is difficult to say that the scheme as proposed by the impugned order either violates the provisions of the Evidence Act or the general practice of examination of witnesses in civil matters.

10. In any case, an order of this nature can hardly be said to be an order in excess of jurisdiction to warrant interference under Article 227 of the Constitution of India or to delay the proceedings before the Appeal Court. The impugned order has been made in Regular Civil Appeal No.73/1994, which means that such appeal is pending since the last 27 years or thereabouts. Mr. Agni points out that such pendency was because the matter was remanded after it was finally disposed of on the earlier occasion. Be that as it may, the matter relates to the year 1994 and the jurisdiction under Article 227 of the Constitution of India need not be exercised to delay the matter even further.

11. For all the aforesaid reasons, this petition is dismissed. There

shall be no order as to costs.

12. The petitioners to place an authenticated copy of this order before the Appeal Court so that the Appeal Court can proceed to dispose of the appeal in accordance with law at the earliest.

M. S. SONAK, J.

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