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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.256 OF 2021

ARVIND GAJANAN SHENVI
GHATKAR AND ANR.

... Petitioners.

Versus

THE MAZANIA OF THE TEMPLE
OF SHRI MAHALAXMI AND ITS
AFFILATES OF PANAJI,
REP. BY ITS ATTORNEY

... Respondents.

Mr. Ajit R. Kantak, Advocate for the Petitioners.

Mr. S. D. Lotlikar, Senior Advocate with Mr. S. Polle, Advocate for the Respondents.

Coram: M.S. SONAK, J.

Date: 28th July 2021.

P.C.:

1. Heard learned Counsel for the parties.
2. The challenge in this petition is to the order dated 06.07.2021 by which the learned Trial Judge has dismissed Petitioners' application seeking recall of PW3 for cross-examination.
3. Mr. Kantak submits that such recall was necessary because PW4, after the conclusion of his cross-examination was granted leave to produce additional documents. Further, even PW1 was recalled for producing additional documents. Mr. Kantak submits that in such circumstances, the Petitioners were entitled to seek recall of PW3, the surveyor who has deposed allegedly based on certain documents of the

parties. Mr. Kantak submits that cross-examination of PW3 is necessary in the context of the additional documents.

4. Mr. Lotlikar, the learned Senior Advocate for the Respondents, opposes the grant of any reliefs in this petition by pointing out that it is impermissible to recall any witness only for cross-examination. He submits that such power is vested in the Court if the Court finds it necessary and appropriate for appreciating the evidence on record in its entirety. Mr. Lotlikar submits that this position has been made clear in *Balkrishna Shivappa Shetty vs. Mahesh Nenshi Bhakta and ors.*¹, and *Gayathri vs. M. Girish*².

5. Mr. Lotlikar, therefore, submits that this petition ought to be dismissed with costs.

6. Mr. Kantak, learned Counsel for the Petitioners rejoins to point out that the Petitioners' application was in the context of the provisions of Order XVIII Rule 17-A of the Civil Procedure Code. He submits that though this provision has been deleted from the CPC, the Hon'ble Supreme Court in the case of *K.K. Velusamy vs. N. Palanisamy*³, has held that such powers in a fit case, can be exercised by the Trial Court under section 151 of the Civil Procedure Code.

7. Having considered the rival contentions and perused the material on record, I find that this application for recall was made by the Petitioners after the Plaintiffs closed their evidence, and further, one of

1 2003(3) Mh.L.J.

2 (2016) 14 SCC 142

3 (2011) 11 SCC 275

the Petitioners examined himself as DW1. Be that as it may, this is not some case where interference is warranted under extraordinary jurisdiction under Article 227 of the Constitution at this stage itself. If ultimately, the matter is decided against the Petitioners, and the Petitioners, decide to question the Judgment and Decree, the Petitioners, will have an opportunity to question even the order impugned in this petition at that stage. This is not some case where a stitch in time will save nine.

8. Even Mr. Kantak, to the pointed query of the Court, submits that it is not as if the impugned order denying the Petitioners' opportunity of cross-examining PW3 is going to make some significant dent in the case of the Petitioners.

9. For all the aforesaid reasons, this petition is not entertained. However, it is made clear that this Court has not decided on the merits of the matter and therefore, if the Petitioners are still aggrieved by the Judgment and Decree that may be made in the suit, the Petitioners, will have the liberty to challenge even the order impugned in this petition at that stage if they choose to.

10. The petition is accordingly dismissed. There shall be no order as to costs.

11. All concerned to act based on an authenticated copy of this order.

M.S. SONAK, J.