

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.117 OF 2020

SUBHASH @ ESVONTA JAGDEO ...Petitioners
PANGAM (DEC) REP. THR. LRS.

VS

SUJIT THOMAS KEERANCHIRA ... Respondent

Ms. Priyanka Kamat, Advocate for the petitioners.

CORAM: MANISH PITALE, J.

DATED: 29th November, 2021.

ORAL ORDER:

1. By this Writ Petition, the petitioners i.e. original plaintiffs have challenged two orders dated 29/11/2018 and 29/04/2019, passed by the Court of Civil Judge, Senior Division at Bicholim (hereinafter referred to as “Trial Court”), whereby the applications filed on behalf of the respondent (original defendant) for production of additional documents and for issuance of summons to witness have been allowed.

2. The petitioners in the present case filed a suit for injunction against the respondent to permanently restrain him from interfering in the suit property. The respondent resisted the suit and after completion of pleadings the trial commenced by recording of evidence of the parties. At the

stage when the witnesses of the petitioners were already examined and recording of evidence of the witnesses for the respondent was underway, an application was filed on behalf of the respondent for appointment of Surveyor. The said application was allowed by the Trial Court, against which the petitioners were constrained to approach this Court by filing Writ Petition No.123 of 2017.

3. By judgment and order dated 12/04/2017, this Court allowed the Writ Petition and set aside the order of the Trial Court, rendering finding that the respondent was seeking to make good the lacunae in his defence.

4. Upon the said Writ Petition being allowed, the Trial Court proceeded further in the matter. At this stage, the respondent filed an application for production of additional documents. The respondent claimed that copies of a plaint and written statement in another suit in which the petitioners were parties, were required to be placed on record in the present suit. It was claimed that the said documents were relevant for the purpose of deciding the issues framed in the present suit. The petitioners resisted the application by pointing out that the documents sought to be brought on

record pertained to a suit filed by the relatives of the petitioners in which the petitioners were arrayed as defendants. In the said suit, *inter alia*, one of the reliefs sought is that of a declaration that the plaintiffs and defendants therein are co-owners. It is submitted that the said documents have nothing to do with the present suit, which is for simplicitor injunction and further that the application is nothing but an attempt to delay the proceedings.

5. By the impugned order dated 29/11/2018, the Trial Court allowed the application for placing the additional documents on record.

6. The respondent filed another application for issuance of summons to one of the plaintiffs in the other suit, as a consequence of the application for placing additional documents being allowed. By the impugned order dated 29/04/2019, the trial Court allowed the said application in the backdrop that the additional documents were already permitted to be placed on record.

7. The present Writ Petition has been filed challenging the aforesaid two orders, wherein notice was issued. The

respondent was served but he chose not to appear before this Court.

8. Ms. Kamat, learned Counsel appearing for the petitioners invited attention of this Court to the contents of two applications filed on behalf of the respondent, which have been allowed by the Trial Court by the impugned orders. It was submitted that the said applications were filed by the respondent with the sole objective of delaying the proceedings before the Trial Court. It is submitted that the documents sought to be brought on record have nothing to do with the controversy in the present suit, which is a suit simplicitor for injunction. It is submitted that a perusal of the impugned order would show that there is no reason given for allowing production of the said additional documents at the stage where the evidence of the petitioners is already over and the respondent has already examined three witnesses. On this basis, it is submitted that the writ petition deserves to be allowed.

9. As noted above, the respondent chose not to appear before this Court, despite being served with notice in the present Writ Petition.

10. This Court perused the applications filed on behalf of the respondent. By the application for permission to place additional documents on record, it is contended on behalf of the respondent that a copy of the plaint and written statement in special Civil Suit no.3/2014/A, is necessary to be placed on record as it is germane to the controversy in the present suit. This Court perused the plaint and the written statement in the aforesaid suit. It is a suit for declaration and injunction filed by relatives of the petitioners, wherein they have been arrayed as defendants. The plaintiffs therein have sought declaration in respect of a Will said to have been executed in favour of the petitioners herein and amongst other prayers, there is specific prayer for declaring the plaintiffs and defendants as co-owners and in joint possession of the suit properties. The said suit pertains to various properties as specifically stated in the plaint. One of the properties happens to be the property in the context of which the petitioners have filed the aforesaid suit for injunction against the respondent herein.

11. This Court finds that the said proceedings in Special Civil Suit No.3/2014/A are between the family members of the petitioners herein and the issues arising in the said

proceedings have no connection with the controversy between the petitioners and the respondent herein. The petitioners are justified in raising a grievance that the respondent moved the said application, only with a view to delay the proceedings in the present suit. A perusal of the impugned order shows that there is no discussion on the crucial aspect of the matter as to the relevancy of the additional documents sought to be placed on record on behalf of the respondent.

12. In paragraph 5 of the impugned order dated 29/11/2018, the Trial Court has simply stated that since law provides that a party can produce additional documents with the permission of the Court at any stage and since no prejudice would be caused to the plaintiffs, the application deserves to be allowed. Although it is noted that such documents can be permitted to be brought on record if they are relevant and material to the case in hand, there is absolutely no discussion in the impugned order as to why the court finds that the documents sought to be brought on record are relevant and material for the present suit. Therefore, it is found that the impugned order is unsustainable.

13. The impugned order dated 29/04/2019, is nothing but an order passed as a consequence of the earlier impugned order dated 29/11/2018. Since this Court has found that the additional documents could not have been permitted to be brought on record, there is no question of allowing the application for issuing summons to the witness. On this ground the impugned order dated 29/04/2019, is also found to be unsustainable

14. in view of the above, the Writ Petition is allowed. The impugned orders are quashed and set aside and the applications filed by the respondent for permission to file additional documents and for issuance of summons to the witness are dismissed.

15. Since the suit has been pending before the Trial Court from the year 2005, the Trial Court is directed to expedite the proceedings and to dispose of the suit expeditiously and in any case within a period of three months from today.

MANISH PITALE, J.