

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 171 OF 2022

Maria Joana Gracy Philomena Pereira @ ... Petitioner
Gracy Antao Rep. By POA Ahmed Basha
Sayyed

Versus

Dr. Miguel Andre Duarte Martins @ Miguel ... Respondents
Andre D. Martin & anr.

Mr. Nigel Da Costa Frias, Advocate with Ms. Bavina
Kukalekar, Advocate for the Petitioner.

Mr. Adish Halankar, Advocate for the Respondent No.1.

CORAM: M. S. KARNIT, J
DATED: 14th MARCH 2023

ORAL ORDER

1. Learned Counsel for the Petitioner seeks leave to amend the Petition by deleting Respondent No.2 from the array of Respondents. Leave to amend is granted. Amendment to be carried out forthwith to delete the Respondent No.2.

2. I have heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent No.1.

3. The Petitioner is the Defendant No.1. The challenge by the Petitioner is to an Order dated 06.03.2020 passed by the Trial Court below Exhibit D-32, rejecting the application filed by the Defendant No.1 for production of additional documents. The Defendant No.1

wanted to produce two letters dated 08.10.2001 and 11.12.2001 in support of his defence. According to the Defendant No.1 they are necessary for the purpose of adjudication of the suit.

4. The Respondent No.1 filed a suit for declaration and cancellation of Deed of Sale made by the Defendant No.1 in favour of Defendant No.2. According to the Plaintiff, the Plaintiff is the owner of more than 50% share of the suit property and the Defendant No.1 is a minority owner of the suit property. It is the defence of the Defendant No.1 that since the Defendant No.1's father had secured the release of the mortgaged suit property, the Defendant No.1 has a major share in the suit property. It is submitted that, in support of defence of Defendant No.1, the two letters which were written by the uncle of the Defendant No.1 way back in 2001 dated 08.10.2001 and 11.12.2001, are necessary to be produced on record.

5. Learned Counsel for the Respondent-Plaintiff, on the other hand, supported the Order passed by the Trial Court. It is submitted that there is a gross delay in making this application for seeking production. It is further submitted that there is no averment in the written statement about the said letters or its contents and, therefore, the same are not relevant in deciding the controversy. It is further submitted that the said letters are produced only to delay the trial and at a stage when the Plaintiff's evidence is already recorded.

6. Heard.

7. I have gone through the findings of the Trial Court while rejecting the application for production of additional documents. The Trial Court referred to the contents of the documents and observed that so far as letter dated 08.10.2001 is concerned, the said letter is not at all necessary for deciding the controversy raised in the suit. Then the Trial Court also referred to the second letter dated 11.12.2001 and observed that the same is written by Jos to Andre Carvalho communicating to Andre Carvalho the advice given by the Advocate in Portugal. In the said letter, said Jos has advised Andre Carvalho what he has to do for getting the land recorded in his name. The Trial Court was of the opinion that the said letter is not necessary in deciding the controversy raised in the suit. The Trial Court has rejected the application only on this premise. The contents of the letter dated 11.12.2001 at page 84 of the paper book, reveals that there is a reference to the loan which was paid by Defendant No.1's father because which portion of land belongs to him and, consequently, to the Defendant No.1. In that context, it was advised that Defendant No.1 should go to the Notary's office and cancel the debt taken and there are no more heirs besides Defendant No.1. This aspect of the letter appears to have not been considered by the Trial Court which may have a bearing on the Petitioner's application for production of documents.

8. Without making any observations on merits of the respective contentions of both the parties, which I keep it open, the Order passed by the Trial Court is set aside and the Application Exhibit D-32 is remitted to the Trial Court for a fresh decision after hearing the parties. I may not be construed to have made any observations on the merits of the matter.

9. All contentions are kept open. The Application Exhibit D-32 is to be decided on its own merits without being influenced by any observations made by me in this Order.

10. Writ Petition is disposed of. No costs.

M. S. KARNIK, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
Date: 2023.03.16 13:45:31 +05'30'