

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 07 OF 2023

1. Eugenio Marcelino Mascarenhas @ Eugene Marshal Mascarenhas, son of late Shri Gilbert Mascarenhas, Aged about 78 years, married and his wife,

2. Mrs. Veronica Virginia Mascarenhas, Daughter of Shri John D' Souza and Wife of Mr. Eugenio Marcelino Mascarenhas @ Eugene Marshal Mascarenhas, Aged about 75 years, housewife. ... Petitioners / Original Plaintiffs

Versus

1. Mrs. Kamakshi @ Rajashree Gopinath Dhargalkar, wife of late Shri Gopinath Tukaram Dhargalkar, Major in Age, widow, housewife;

2. Mr. Raju Gopinath Dhargalkar, Son of late Shri Gopinath Tukaram Dhargalkar, Major in Age;

3. Mr. Pramod Gopinath Dhargalkar, So of late Shri Gopinath Tukaram Dhargalkar, Major in Age;

4. Mr. Nilesh Gopinath Dhargalkar, Son of late Shri Gopinath Tukaram Dhargalkar, Major in age,

All Indian Nationals and Residing at H. No. 1419, Near Church/St. Sebastian Wado, Anjuna, Bardez-Goa. ... Respondents / Original Defendant Nos. 1, 3 and 4

Mr. Deepak Gaonkar, Advocate *for the Petitioners.*

Mr. Parag Rao, Advocate *with Mr. Akhil Parrikar, Advocate for the Respondent Nos. 1, 3 & 4.*

CORAM: B. P. COLABAWALLA, J
DATED: 18th FEBRUARY 2023

ORAL JUDGMENT

1. Rule. With the consent of the parties, Rule is made returnable forthwith and heard finally. Learned Counsel appearing for the Respondent Nos. 1, 3 and 4, waive notice.

2. The above Writ Petition is filed seeking to challenge the Order dated 10.10.2022 passed by the Court of Civil Judge, Junior Division, 'G' Court at Mapusa, in Regular Civil Suit No. 88/2021/G. By the impugned Order, the Application filed by the Plaintiffs for production of documents [Exhibit D-22], was dismissed.

3. I have heard Mr. Gaonkar, the learned Counsel appearing on behalf of the Petitioners (original Plaintiffs) as well as Mr. Rao, learned Counsel appearing on behalf of Respondent nos. 1, 3 and 4 (original Defendant Nos. 1, 3 and 4).

4. Initially, the Plaintiff had filed an application seeking amendment of the plaint and which was allowed by the Trial Court vide its Order dated 10.10.2022. Along with the Amendment Application, a separate Application was filed for production of documents, namely 14 photographs, to substantiate the case of the

Plaintiffs that the concerned Defendants are carrying on illegal construction on the property belonging to the Plaintiffs. It is surprising, that though the Amendment Application was allowed, the Application for production of documents, which is really in the nature of evidence in support of the pleadings which were granted by the amendment, has not been allowed. To my mind, this is clearly an error apparent on the face of the record, which requires interference under Article 227 of the Constitution of India.

5. I fail to understand why, when the pleadings are allowed to be amended, the evidence in support of those pleadings is rejected by the Trial Court.

6. In these circumstances, the impugned Order dated 10.10.2022 on Exhibit D-22, is hereby quashed and set aside and the Application (Exhibit D-22) of the original Plaintiffs/Petitioners to produce the 14 photographs on record before the Trial Court is allowed.

7. It is needless to clarify that by allowing the production of documents, does not mean that the Defendants won't be allowed to object to the same on whatever grounds available to them in law.

8. Rule is made absolute in the aforesaid terms and the Writ Petition is also accordingly disposed of. No order as to costs.

9. This Order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J