

Shakuntala

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.43 OF 2024**

Mr. Roque Remedious Fernandes,
through his Power of Attorney holder
Mr. Guilford Fernandes,
s/o Mr. Pedro Fernandes,
aged 42 years, businessman,
Indian National, r/o H.No.333,
Cansaulim, Goa. ... PETITIONER

Versus

1. MR. ANTHONY MARCELLINO BARRETTO,
Son of Mr. Gabriel A. E. Barretto,
Major of age, Indian National,
Resident of H.No. 399,
Behind Tita Maria Apt. Mangor Hill,
Vasco Da Gama, Goa.

2. MRS. MAURA OLIVIA PEREIRA
ALIAS MOURA OLIVIA BARRETTO,
w/o Mr. Anthony Marcellino Barretto,
major of age, r/o H.No. 399,
Behind Tita Maria Apt. Mangoor Hill,
Vasco Da Gama, Goa. ... RESPONDENTS

Mr. Athnain Naik, learned Advocate for the Petitioner.

None present for the Respondents.

CORAM: BHARAT P. DESHPANDE, J.

DATED : 10th January, 2024

ORAL ORDER

1. Heard Mr. Naik learned Advocate appearing for the Petitioner.

2. By way of the present petition, two orders passed by the learned Trial Court are challenged. The first order dated 15.09.2023 is the rejection of the application for production of additional documents. The second order is also of the same date but in connection with rejection of application filed under Section 45 of the Evidence Act.

3. Mr. Naik would submit that the Plaintiff/Petitioner filed the suit for declaration of the Sale deed dated 30.12.2013 as null and void thereby transferring the suit flat in the name of Defendant No. 2 and Defendant No. 1 using forged Power of Attorney. He would submit that during the cross examination of Defendant No. 1, the Plaintiff wanted to produce certain documents which were obtained under RTI. Such application has been rejected by the Trial Court. He would further submit that since the claim of the Plaintiff is that the signature of the Plaintiff was forged on the Power of Attorney, it is necessary to take specimen signatures of the Plaintiff and the Notary and to be forwarded for the opinion of the Government Examiner. He admits that the Notary Advocate, Mr. Albino Vales has expired. However, the signature of the Plaintiff could have been obtained for the purpose of referring the

Power of Attorney at exhibit 42 to the Government Examiner.

4. The first contention with regard to production of documents, the application filed by Plaintiff is admittedly at the stage of cross examination of DW-1. The documents referred in exhibit 102 are the documents with regard to some Sale deeds, Affidavit, Construction licenses, statements of some of the witnesses and receipts; except the document at serial no. 1 i.e. reply from the Village Panchayat dated 11.04.2023, all other documents are with regard to the permission issued by the Planning Authorities, Occupancy Certificates, Completion Certificates, etc.

5. The learned Trial Court by a detailed order observed that first of all the documents obtained under RTI and found from serial no. (a) to (f) in the application are in respect of a different property which is not the subject matter of the suit. Similarly, it is observed that some of the documents listed in the said application are even prior to the date of filing of the suit and no justification is given by the Plaintiff as to why these documents are not placed along with the plaint or before the settlement of issues. The learned Trial Court has observed that some of the documents are not relevant for the issue involved in the suit. Whereas, in connection with other

documents, there is no sufficient reasons as to why these documents were not placed at the time of filing of the suit.

6. Such findings are neither perverse nor illegal so as to interfere in the Supervisory Jurisdiction of this Court. It appears that the Plaintiff is only trying to prolong the matter by filing and producing documents which are not relevant for the issue involved in the suit.

7. The second application is under Section 45 of the Evidence Act. It is the contention of the Plaintiff that the Power of Attorney at exhibit 42 dated 14.08.2002 is a forged document. The Plaintiff claimed that he never executed such documents in favour of Defendant No. 1.

8. After filing of the written statement wherein the Defendant No. 1 categorically denied the contention of the Plaintiff, issues were framed and thereafter the Plaintiff stepped into the witness box. The evidence of the Plaintiff is over and now the matter is fixed for Defence Evidence. At this stage, the application is filed for obtaining specimen signature of the Plaintiff and sending the original Power of Attorney for examination of an expert.

9. It is admitted fact that the Notary before whom such

document was executed has expired. Thus the signature of the Notary cannot be obtained for examination.

10. The learned Trial Court by giving reasons from paragraph no. 5 onwards, observed that first of all such application is filed belatedly and that the Court cannot be a party for collection of evidence.

11. First of all, the Plaintiff failed to examine any expert or to rely upon a report of any Handwriting Expert, specifically, when his contention from the beginning is that his signature was forged on the Power of Attorney. Now after the Plaintiff's Evidence is over, an application is filed, which is apparently for filling up of the lacunas found in the evidence of the Plaintiff.

12. The observations of the learned Trial Court while rejecting the application under exhibit 103, therefore cannot be faulted with. The Petitioner failed to demonstrate any illegality or perversity in the Impugned Orders.

13. Accordingly, there is no substance in the entire petition. The same stands dismissed. No order as to cost.

BHARAT P. DESHPANDE, J.