



**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.703 OF 2023**

1. Shri Benedito Gonsalves, (Since Deceased)
Aged 84 years,
son of late Manuel Gonsalves,

through his Legal Heirs,
 - 1a) Shri. Mario Gonsalves,
Aged 42 years and his wife;
 - 1b) Mrs. Lyn Vaz,
Aged about 36 years;
 - 1c) Mr. Melvin Gonsalves,
Aged about 40 years and his wife;
 - 1d) Mrs. Chetana D'Souza,
Aged about 35 years,

 2. Smt. Cristina Mascarenhas,
aged 73 years, housewife,
All residents of House No: 148,
Vitlamoddi, Amona, Quepem-Goa...
- Petitioners

Versus

1. Cabido da Se Premacial or Cathedral Chapter
da Archdiocese of Goa, also known as Deao,
represented by Special Power of Attorney,
Pedro Conceicao Mario Gonsalves,
residing at House No: 146, Vitlamoddi,
Amona, Quepem Goa.

 2. Shri. Pedro Conceicao Mario Gonsalves,
aged about 65 years, married, seaman,
and his wife,

 3. Smt. Rumaldina Dourado,
housewife, major,
both residents of House No: 146,
Vitlamoddi, Amona,
Quepem...
- Respondents/ Original Defendants

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Mr. Vilas Thali with Mr. Rasik Borkar, Advocate for Petitioners.
Mr. Rushikesh Sahakari, Advocate for Respondent No.1.
Mr. R. G. Ramani, Senior Advocate with Mr. Vinayak Nevrekar,
Advocate for Respondent Nos.2 and 3.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 12th AUGUST, 2026.

PRONOUNCED ON : 17th AUGUST, 2026.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is heard finally at admission stage.
2. The petitioners (legal heirs of original plaintiffs) impugn following orders passed by Civil Judge Junior Division, Quepem-Goa:-
 1. Order dated 06.09.2023 at Exhibit-D-132 allowing respondent nos.2 and 3 to produce an additional document, viz a Will dated 11.08.1992.
 2. Order dated 06.09.2023 at Exhibit-D-134 allowing respondent nos.2 and 3 to amend their written statement.
 3. Order dated 25.09.2023 at Exhibit-D-136 allowing application of respondent nos.2 and 3 to recall DW1 and file his additional affidavit-in-evidence.
 4. Order dated 04.10.2023 at Exhibit-D-140 dismissing petitioners' application for amendment in plaint.
3. The petitioners are legal heirs of original plaintiff Mr. Benedito Gonsalves. The Regular Civil Suit No.69/1996 was instituted by him before Civil Judge Junior Division at Quepem seeking relief of declaration that perpetual lease dated 09.03.1994 executed by respondent no.1 in favour of respondent no.2 is null and void and injunction to restrain respondent nos.2 and 3 from alienating suit paddy

field. It is contention of plaintiff that suit field is portion of property known as Varzea or Vagoma surveyed under no.17/78 of Amona village. It was cultivated by late Manuel Gonsalves (Father of plaintiff and defendant no. 2). The plaintiff and defendant nos.2 and 3 are his legal heirs. After death of Manuel Gonsalves, his widow Smt. Pasquela Fernandes was cultivating suit field with assistance of plaintiff. She expired on 17.05.1996 leaving behind three sons and two daughters i.e. plaintiff no.1, Anonio Gonsalves, defendant no.2, Ana, Rosa and Salvacao Gonsalves. Later on, dispute erupted amongst heirs of late Manuel Gonsalves.

4. The plaintiff instituted Inventory proceeding no.60/1996 for partition of assets left by parents before Civil Judge Senior Division at Quepem including suit field. The defendant nos.2 and 3 filed objection and claimed their exclusive rights by virtue of perpetual lease dated 09.03.1994 executed by defendant no.1. The plaintiff came to know about said lease on 09.09.1996 through objection filed by defendant nos.2 and 3. The contention of plaintiff is that suit paddy field is heritable to all legal heirs, hence, defendant nos.2 and 3 could not obtain perpetual lease to the exclusion of other heirs. The plaintiff is having 1/5th share in suit paddy field. The suit is contested by defendant nos.2 and 3 by filing written statement contending that plaintiff has full

knowledge of perpetual lease, which was never objected by him since he had no right in suit paddy field.

5. During pendency of suit, tenancy issue was reframed by this Court in Civil Revision Application No.71/2000 and matter was sent to Mamlatdar. Finally, Administrative Tribunal, Goa by judgment and order dated 20.04.2021 declared that suit paddy field is in joint tenancy inherited by all legal heirs of late Manuel Gonsalves. The aforesaid decision of Administrative Tribunal, Goa has attained finality. As such, suit property is joint tenancy inherited by all legal heirs of late Manuel Gonsalves. Practically challenge raised in suit to perpetual lease dated 09.03.1994 rendered insignificant. However, parties proceeded to record evidence. The plaintiff closed his evidence on 19.08.2023. The defendant no.2 (DW-1) also completed his evidence.

6. At this stage, respondent nos.2 and 3 filed application below Exhibits 132 and 134 for amending their written statement and bringing on record public Will dated 11.08.1992 allegedly made by Ms. Pasquela Fernandes. The Trial Court allowed both applications vide impugned orders dated 06.09.2023. In light of aforesaid orders, respondent nos.2 and 3 filed another application at Exhibit-136 to recall DW-1 and file additional affidavit-in-evidence, which has been allowed vide impugned order dated 25.09.2023. At this stage, petitioners filed application Exhibit-140 for amendment of plaint raising challenge to public Will.

However, said application suffered dismissal by impugned order dated 04.10.2023.

7. Mr. Vilas Thali, learned Advocate appearing for petitioners fairly submits that in light of judgment delivered by Administrative Tribunal, declaring suit property as joint tenancy, inherited by all legal heirs of late Manuel Gonsalves, prayer for declaration against perpetual lease in suit rendered insignificant. However, since defendants amended written statement and filed on record public Will dated 11.08.1992, asserting their claim over disposable share of Smt. Pasquela Fernandes, petitioners are required to file application seeking amendment in plaint challenging public Will, apprehending defence of bar under Order II Rule 2 of Code of Civil Procedure (hereinafter referred as 'CPC'), which may operate in independent suit filed by plaintiff seeking declaration against public Will. In support of his contentions, he relies upon following judgments:

1. *Gurdial Singh and others Vs. Raj Kumar Aneja and others*¹.

2. *Gajanan R. Salvi Vs. Satish Shankar Gupte and others*².

8. Per contra, Mr. R. G. Ramani, learned Senior Advocate appearing for respondent nos.2 and 3 fairly concedes that bar under Order II Rule 2 of CPC would not arise in subsequent suit instituted by plaintiffs raising challenge to public Will, as fresh suit is based on recent cause of

¹ (2002) 2 SCC 445.

² 2005 (1) Mh.L.J. 966.

action, which is different than cause of action pleaded in present suit. Even, he makes candid statement on instructions from respondent nos.2 and 3 that they would not plead bar of Order II Rule 2 of CPC in plaintiffs' suit against public Will.

9. Having considered submissions advanced by learned Advocates appearing for respective parties, as conceded by learned Advocates for both parties, present suit can be disposed of on the basis of pleadings and evidence, which is already on record. Mr. Ramani, learned Senior Advocate makes responsible statement that defendants would not press their prayer for recall of DW-1 and proceed to argue matter without leading further evidence.

10. This Court finds that so far as proposed amendment in plaint, thereby raising challenge to public Will would be absolutely unwarranted, as plaintiffs have already instituted independent suit for that purpose. The apprehension expressed on behalf of plaintiffs that failure to challenge public Will in present suit would operate as bar under Order II Rule 2 of CPC in his independent suit cannot be countenanced, as said suit is filed on the basis of independent cause of action after getting knowledge of public Will dated 11.08.1992. In present suit objection is raised to permanent lease dated 09.03.1994 executed by defendant no.1 in favour of defendant no.2 in relation to paddy field only. In present suit defendants filed copy of public Will

executed by Smt. Pasquela Fernandes only with a view to bring to notice of this Court their claim on the basis of public Will.

11. Pertinently, independent Inventory proceeding is pending between parties and their shares would be determined in that suit. This Court finds that, in wake of pendency of inventory proceeding and independent suit raising challenge to public Will, present suit can be disposed of by Trial Court without recording further evidence taking into account order dated 20.04.2021 passed by Administrative Tribunal, Goa declaring joint tenancy of legal heirs of late Manuel Gonsalves.

12. In that view of matter, Writ Petition stands dismissed.

13. The Trial Court shall proceed to decide pending suit expeditiously. None of the party would be entitled to lead further evidence or recall witness for that purpose.

14. Needless to state here that, Trial Court would not delve into validity of public Will while rendering decision in present suit.

15. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE