

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 430 OF 2015

MR.DAMODAR SUBA PRABHU AND ANR., ... Petitioners
Versus
MR.GHANASHYAM VASANT PAI AND ANR., ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. A. Naik, Advocate for the Petitioners.

Coram:- F. M. REIS, J.

Date:- 26th June, 2015

ORAL ORDER

Heard Shri S. D. Lotlikar, learned Senior Advocate appearing for the Petitioners.

2. The above Petition, inter alia, seeks to challenge an Order passed by the learned Judge dated 17.03.2015 whereby an application filed by the Petitioner for Decree on admission came to be dismissed.

3. Shri S. D. Lotlikar, learned Senior Advocate appearing for the Petitioners, pointed out that the defence of the Respondents to the suit filed by the Petitioners is without any basis as, according to him, all the averments which constitute the cause of action according to the Petitioners have been admitted by the Respondents herein. Learned Senior Advocate further pointed out that all the issues which were framed by the learned Judge do not at all arise in the suit as,

according to him, the issues ought to have been re-framed and the burden ought to have been cast on defendants/Respondents herein. Learned Senior Advocate has thereafter taken me through the written statement to point out that the averments in the plaint have not been disputed by the Respondents and the contentions which have been raised do not affect at all the right of the Petitioners to get a Decree in their favour. Learned Senior Counsel has also taken me through the impugned Order to point out that the learned Judge has not at all applied its mind to the provisions of Order 12 of the Civil Procedure Code. In support of his contentions, the learned Senior Counsel has relied upon the Judgment of the Apex Court reported in 2012(11)SCC 205 in the case of Sunil Clifford Daniel vs. State of Punjab.

4. I have considered the submissions of the learned Counsel and I have also gone through the records. On perusal of the impugned Order, I find that there is no jurisdictional error committed by the learned Judge which would call for interference in the present Writ Petition. No doubt, at the stage of framing the issues, it was open to the parties to raise objections with regards to the issues which were framed. As no such objection was raised nor any application was filed for deleting the issues, the question of seeking for stay of the Decree would not at all arise. In this view of the matter, I find no reason to interfere with the impugned Order. Liberty to the Petitioners to challenge the Order.

5. Needless to say, if Petitioners are so advised, may take appropriate steps in accordance with law. In case such application is filed, the learned Judge shall hear the parties on its own merits after the learned Judge hearing the Respondents.

F. M. REIS, J.

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