

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 444 OF 2015**

1. Shri Subhash S. Naik,  
major of age,  
son of S. Naik,  
resident of h,. No. 234,  
Baag, Sanvordem,  
Sanguem, Goa.
  2. Shri Tarachand S. Naik,  
major of age,  
son of S. Naik,  
resident of H. No. 234,  
Baag, Sanvordem,  
Sanguem, Goa.
  3. Shri Sunderdas S.Naik,  
major of age,  
resident of Baag, Sanvordem,  
Sanguem, Goa.
- ..... Petitioners

***V e r s u s***

1. Shri Vishwas Sadassiva Naik,  
major of age,  
resident of Goenchem Mola,  
Sanvordem, Sanguem, Goa.
  2. Smt. Vishranti Viswas Naik,  
major of age,  
resident of Goenchem Mola,  
Sanvordem, Sanguem, Goa.
  3. Shri Sanvlo Shambu Naik,  
80 years of age, businessman,  
son of late Shambu Naik,  
resident of H. No. 234,  
Baag, Sanvordem,  
Sanguem, Goa.
- ..... Respondents

Mr. A. D. Bhohe, Advocate for the Petitioners.

Mr. V. P. Thali, Advocate for the Respondent nos. 1 and 2.

**Coram :- F. M. REIS, J**

**Date : 7<sup>th</sup> August, 2015.**

**ORAL JUDGMENT**

Heard Shri Bhobe, learned Counsel appearing for the Petitioners and Shri Thali, learned Counsel appearing for the Respondent nos. 1 and 2.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondent nos. 1 and 2 waives service. Notice on Respondent no. 3 is dispensed with as he is not connected with the dispute raised in the above Writ Petition.

3. During the course of the hearing of the above Writ Petition, Shri A. D. Bhobe, learned Counsel appearing for the Petitioners, has pointed out that the impugned Order has been passed on the assumption that the original Judgment Debtor has expired and his legal representatives were required to be brought on record. Learned Counsel further pointed out that the Judgment Debtor, who is the Respondent no. 3, is alive and, consequently, the basis on which the application has been filed by the Respondent nos. 1 and 2 are erroneous and, as such, the impugned Order deserves to be quashed and set aside.

4. Shri V. P. Thali, learned Counsel appearing for the Respondent nos. 1 and 2, fairly accepts that the question of bringing the children of the Respondent no. 3 on the basis that they are the legal representatives may not be appropriate.

5. It is further pointed out that the children of the Respondent no. 3 are violating the Decree under execution at the instance of the Respondent no. 3. Shri V. P. Thali, learned Counsel appearing for the Respondent nos. 1 and 2, has pointed out that he may be permitted to withdraw the original application filed by the Respondent nos. 1 and 2 dated 30.04.2014 with liberty to file a fresh application raising appropriate contentions with that regard.

6. Shri A. D. Bhobe, learned Counsel appearing for the Petitioners, has pointed out that subject to the objections, if any, of the Petitioners, such leave may be granted. Shri Bhobe, learned Counsel, has also disputed the contentions of Mr. V. P. Thali, learned Counsel appearing for the Respondent nos. 1 and 2, that the Petitioners have ever interfered or committed any violation of the Decree under execution.

7. Be that as it may, without examining the correctness of the rival contentions on the allegation of Mr. Thali, learned Counsel appearing for the Respondent nos. 1 and 2, I find it appropriate to permit the Respondent nos. 1 and 2 to withdraw the said application dated 30.04.2014 with liberty to file a fresh application in accordance with law. In such circumstances, the impugned Order passed by the learned Judge, does not survive and deserves to be quashed and set aside.

8. In view of the above, I pass the following :

**ORDER**

(i) The impugned Orders dated 19.06.2014, 11.08.2014 and 04.05.2015, are quashed and set aside.

(ii) The application filed by the Respondent nos. 1 and 2 dated 30.04.2014 is allowed to be withdrawn with liberty to the Respondent nos. 1 and 2 to file appropriate application with regard to the contentions referred to herein above in accordance with law.

(iii) All contentions of the parties are left open.

(iv) Rule made absolute in the above terms.

**F .M. REIS, J.**

arp/\*