

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.490 of 2015**

1. Mr. Sheik Mahamad Gaus Bizli,
S/o late Sheik Hassan Bizli,
Age 34 years, married, Pvt. Service,
 2. Mrs. Reshma Bi Bizli,
W/o Sheik Mahamad Gaus Bizli,
Married, housewife, major in age,
Both are resident of F-2,
Near Jama Masjid, Bicholim-Goa
- .. Petitioners
(Original Plaintiffs in
S.C.S. no.38/09/A)

Versus

1. Mrs. Fatima Bi Bizli,
W/o late Sheik Hassan Bizli,
Housewife, major in age,
Resident of House No.63,
Behind Church, Church wada,
Bicholim-Goa.
2. Mrs. Shaikh Nazima Bi,
W/o Shaikh Fayaz,
D/o late Sheik Hassan Bizli,
Housewife, major in age,
Resident of Bhatlem,
Panjim-Goa,
Presently residing at House
No.63, Behind Church,
Churchwada, Bicholim-Goa.
3. Mr. Shaikh Fayaz,
S/o Shaikh Ahmad,
Age 34 years, married, service,
Resident of Bhatlem,
Panajim-Goa. Presently residing
at House No.63, Behind Church,
Church wada, Bicholim-Goa.
4. Mr. Asif Ba Karol alias Asif Karol,
S/o late Ba Karol,

Age 30 years, married, businessman,
R/o Housing board colony,
Harvalem, Sanquelim-Goa. .. Respondents
(Original Defendants in
S.C.S. No.38/09/A)

Ms. Smita S. Gawas, Advocate for the petitioners.

Mr. Shaikh Vahidulla, Advocate for the respondent nos.1 and 2.

CORAM :- C. V. BHADANG, J.

Date : 26th August, 2015.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Mr. Vahidulla, the learned Counsel waives service on behalf the respondent nos.1 and 2. Heard finally by consent.

2. The petitioners are the plaintiffs in Special Civil Suit No.38/2009/A, pending before the learned Civil Judge, Senior Division, Bicholim. The defendant no.3, who was residing in Saudi Arabia, had expired on 28/05/2013. It is not in dispute and in fact it is the matter of record that Smt. Shaikh Nazima Bi, who is the widow of defendant no.3 is already on record as defendant no.2. The petitioners only sought to add son of the deceased, namely Master Shaikh Mazim on record, which was objected to by the defendant no.4. The Trial Court has dismissed the application by

order dated 13/10/2014 on two grounds, firstly that the application is not accompanied by an application for condonation of delay and secondly, that the application is not supported by an affidavit or verification of the plaintiffs.

3. I have heard the learned Counsel for the parties. It is clear that when one of the legal heirs, namely widow of the deceased is on record, there is no question of abatement of the suit as against the defendant no.3. The petitioners only wanted to bring on record the son of the deceased. In that view of the matter, the application could not have been dismissed for the reasons as stated. The petitioner shall file an affidavit in support of the application within two weeks from today.

4. In the result, the petition is allowed.

- (i) The impugned order dated 13/10/2014 is set aside.
- (ii) The application (Exhibit 49-C) is allowed, subject to filing of an affidavit within two weeks from today.
- (iii) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA