

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 35 OF 2014

SHRI. LUIS SEBASTIAO CONSTANTINO
RODRIGUES AND 10 ORS.

... Applicants/Petitioners

Versus

SHRI. AGNELO JOSE BENTO RODRIGUES
AND 5 ORS.

... Respondents

Shri A.D. Bhobe, Advocate for the Applicants/Petitioners.

Shri S.D. Lotlikar, Senior Advocate with Ms. P. Hegde, Advocate for
the Respondent Nos. 1 and 2.

Ms. Priyanka Kamat, Additional Government Advocate for the
Respondent Nos. 3, 4 and 5.

None for Respondent No. 6.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 1st JULY, 2015.

PRONOUNCED ON:- 2nd JULY, 2015.

ORDER:

By this revision application, the applicants (original
defendant nos. 1 to 11) are challenging the order dated
13.08.2014, passed by the learned District Judge, Panaji in Civil

Suit No. 17/2013. By the impugned order, the application (Exhibit D-7), filed by the original defendant no. 1, under Order 7 Rule 11 of the Code of Civil Procedure (C.P.C., for short) has been dismissed.

2. The brief facts are that the first and the second respondents filed Civil Suit no. 17/2013, before the learned District Judge, Panaji, *inter-alia* for the following reliefs:-

(a) A decree of declaration be passed setting aside the judgment dated 31.07.2012 in the Inventory Proceedings No. 27/2012/C passed by the Civil Judge Junior Division at Ponda as null and void and not binding on the plaintiffs.

(b) A decree of declaration be passed that the plaintiffs are co-owners alongwith the defendant nos. 1 to 12 in the remaining estate of the deceased parents Pedro Santana Rodrigues and Quiteria Maria Rodrigues.

(c) A decree of permanent mandatory injunction be passed restraining the defendant nos. 13 and 14 from transferring the said excise licences standing in the name of George

Rodrigues to the defendant nos. 1, 2, 3 and 4 or any third party to whom the defendant no. 1 may try to effect transfer.

(d) A decree of permanent injunction be passed restraining the defendant nos. 1 to 4 or their agents, servants, representatives or any person acting on their behalf from conducting any business by using the said excise licence standing in the name of George Rodrigues.

3. The original defendant no. 1 filed an application under Order 7 Rule 11 of C.P.C., for rejection of the plaint on the ground that the suit is barred under Section 44 of the Goa Excise Act, 1964 (the Act of 1964, for short). It was also contended that there was no cause action for filing this suit and the Court has no jurisdiction to entertain this suit as jurisdiction to declare an order passed in inventory proceedings, lies to the Court which passed the said decree and as such, the suit is to be appended to the inventory proceedings.

4. The learned trial Court framed two points as under:

- (i) Whether there is no cause of action ?
- (ii) Whether this Court has no jurisdiction to decide the suit ?

The learned trial Court took both the points for consideration together and answered them in the negative and proceeded to dismiss the application. That is how the petitioners are before this Court.

5. I have heard Shri Bhobe, the learned Counsel for the petitioners, Shri Lotlikar, learned Senior Counsel for the respondent nos. 1 and 2 and Ms. Kamat, the learned Additional Government Advocate for the respondent nos. 3, 4 and 5.

6. It is submitted by Shri Bhobe, learned Counsel for the applicants that the suit is filed to declare the inventory proceedings of the year 2012 as null and void. It is submitted on the basis of Article 1427 of the Civil Code, that a suit for rescission or suit for amendment referred to in the said Article and in the preceeding shall be appendant of the inventory. It is submitted that the inventory proceedings are before the competent Court at

Ponda and thus, the District Court, where the present suit is filed will have no jurisdiction. It is submitted that this aspect is not adverted to and considered by the trial Court. It is next submitted that the first and second respondents are in fact seeking direction to the concerned officer of the Government under the Act of 1964. It is submitted that sub Section 1 of Section 44 of the Act of 1964 would bar such a suit. He therefore, submitted that the impugned order would show manifest error as to exercise of jurisdiction, which needs to be corrected.

7. On the contrary, it is submitted by Shri Lotlikar, learned Senior Counsel for the first and second respondents that Section 44(1) of the Act of 1964 cannot come to the aid of the applicants, in as much as it only grants immunity to the Government or any Officer or other person against a suit for damages in respect of an act done in good faith. It is submitted that the suit filed by the first and second respondents is not for damages and thus, Section 44(1) of the Act of 1964 would not be attracted. It is submitted that in so far as the cause of action is concerned, the learned trial Court has rightly come to the conclusion that the plaint read as a

whole shows the existence of cause of action. In so far as submissions based on Article 1427 of the Code is concerned, it is submitted that it no where provides that rescission of judicial partition or challenging of inventory proceedings, has to be filed in the same Court. What all it says is that the inventory proceedings shall be the appendant of the suit.

8. Ms. Kamat, learned Additional Government Advocate appearing for the respondent nos. 3, 4 and 5 has nothing much to say in the matter, as the dispute is essentially between the private parties.

9. On hearing the learned Counsel for the parties and on perusal of the impugned order and the plaint, as also the application under Order 7 Rule 11 of C.P.C., I find that no case for interference is made out.

10. It is now well settled that while examining, whether the plaint is liable to be rejected under Order 7 Rule 11 of C.P.C., the Court has to confine itself to the allegations in the plaint and the

documents annexed. (See **LiverPool and London S.P. & I Association Ltd. Vs. M.V. Sea success I and another**, reported in **(2004) 9 SCC 512**). Thus, the said issue has to be examined without reference to any defence. Further more, the Court need not embark upon detailed enquiry, as to whether the petitioners have a case, which is likely to succeed. It has to be shown on the face of it, that the plaint, does not disclose any cause of action or it is barred by any law.

11. Coming back to the present case, according to the plaint allegations, it is the case made out by the first and second respondents that the parties are related to each other. After the death of the father of the first respondent, inventory proceedings were initiated in the year 1982 in which, half of the share went to his wife i.e. mother of the first respondent and remaining half was allotted equally to George Rodrigues and Victor Rodrigues. According to the first and second respondents, after the death of the mother in the year 2012, the appellant no. 1 (original defendant no. 1) without knowledge of the first respondent initiated inventory proceedings which were concluded on

31.12.2012. In pursuance thereof, the appellant no. 1 (original defendant no. 1) had applied for transfer of excise licence. On learning this, a suit came to be filed. The Officers under Act of 1964 are made parties, in order to ensure that there are no orders passed in respect of the transfer of the excise licence. A perusal of paragraph 9 of the impugned order would show that the learned trial Court after considering the averments in the plaint, had come to the conclusion and to my mind rightly so, that the plaint disclosed the cause of action, in as much as in the plaint it was averred that appellant no. 1 (original defendant no. 1) had instituted inventory proceedings behind the back of the first and second respondents and had also sought transfer of liquor licence in pursuance of the orders dated 31.12.2012. Thus, no exception can be taken to the finding about the plaint having disclosed a cause of action.

12. Coming to the submissions based on Section 44, Sub Section 1 of the Act of 1964, which is relevant for the purpose reads thus:

"44. Bar of certain suits:-

(1) No suit shall lie in any civil Court against the Government or any Officer or person for damages for any act in good faith done in pursuance of the Act."

A bare perusal of the same would show that it grants immunity to the Government Officer or any other person against damages in respect of any act done in good faith or intended to be done in pursuance of the Act. The said section cannot take into its ambit, the nature of the suit, as presently initiated. As noticed earlier, the dispute is between the private parties and the respondent nos. 3 to 5 are made parties to ensure that there are no orders passed in respect of the liquor licence. As the plaint stands, it cannot be said that it is against any Government Officer or any other person's, for damages. Thus, the submissions based on Section 44 of the Act of 1964, cannot be accepted and will have to be refuted.

13. This takes me to the last ground based on Article 1427 of the Civil Code. It is submitted on behalf of the first and second respondents that in as much as the Government Officers

(respondent no. 3 to 5) are the parties to the suit, the same lies before the District Court. Thus, the suit could not have been instituted in the Court of Civil Judge Senior Division, Ponda.

14. On a careful consideration of the submissions on behalf of the applicants, I find that, all that Article 1427 of the Civil Code provides is that the suit has to be appendant of the inventory proceedings. This presupposes that the suit as initiated, can otherwise lie before the Court, before which the inventory proceedings were concluded. The provision under Article 1427 is aimed at preventing multiplicity of proceedings. They cannot impinge on the jurisdiction of the Court, particularly when the suit in the present case would have to be filed before the District Court (as the Goa Government officers are parties thereto), I find that on the basis of Article 1427 of the Civil Code, it cannot be said that the suit is barred by any law, requiring its rejection under Order 7 Rule 11 of C.P.C.

15. I do not find that the impugned order exhibits any jurisdictional error, so as to require interference.

16. In the result, the civil revision application is hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

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