

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 193/2014**

Smt. Filomena Esperanca
Constantina Costa e Pinheiro,
major of age,
wife of Jose Lazaro Pinheiro,
married, housewife,
r/o. H.No.757, Campar,
Lotulim, Salcete, Goa.

..... Petitioner.

Versus.

1. Smt. Nishita Nagendra Shenoy,
major of age, married, daughter
of Sanjiv Pai, Bank Employee,
residing at Juhu, Mumbai 400 049

2. Smt. Meher Ratnakar Salkar,
major of age, daughter of Manek Bamji,
Business, residing at
Vakola, Santacruz, Mumbai 400 055.

3. Ponda Municipal Council,
through its Chief Officer,
with Office at Ponda, Goa.

..... Respondents.

Mr. A. D. Bhobe, and Ms. S. Bhobe, Advocates for the petitioner.

Mr. R. G. Ramani, Advocate for the respondents No.1 and 2.

CORAM :- F.M. REIS, J.

Date : - 24th July, 2015.

ORAL JUDGMENT :

Heard Mr. A. D. Bhobe, learned Counsel appearing for the petitioner and Mr. R.G. Ramani, learned Counsel appearing for the respondents.

2. Rule. Heard forthwith, with the consent of the learned Counsel. Learned Counsel appearing for the respondents waives service.

3. The above petition, *inter alia*, takes exception to an order dated 7/9/2013 passed by the learned Civil Judge, Junior Division 'B' at Ponda in Regular Civil Suit No.67/2010/B whereby issue No.1 was decided in the affirmative and consequently, the suit came to be dismissed.

4. At the time of the hearing of the above writ petition, Mr. R.G. Ramani, learned Counsel appearing for the respondents No.1 and 2 has raised a preliminary objection that the writ petition itself is not maintainable as, according to him, the petitioner has an alternate remedy of challenging the impugned order by preferring a substantive

appeal. The learned Counsel further points out that the suit has been dismissed on the preliminary issue which, according to him, is appealable in terms of Section 96 of the Code of Civil Prosecution. The learned Counsel further submits that when a remedy of an appeal is provided under the Statute, this Court cannot exercise its jurisdiction under Article 227 of the Constitution of India. In support of his submission, Mr. Ramani has relied upon a Judgment of the Apex Court reported in (2015) 2 SCC 682 in the case of ***Rajni Rani and another vs. Khairati Lal and others***. The learned Counsel, as such, points out that the petition be accordingly rejected.

5. On the other hand, Mr. A.D. Bhobe, learned Counsel appearing for the petitioner has submitted that even if an alternate remedy is available to the petitioner that, by itself, does not preclude this Court from exercising its power of superintendence over the subordinate Judiciary under Article 227 of the Constitution. The learned Counsel further points out that the impugned order passed by the learned Judge is patently erroneous as, according to him, the learned Judge has come to the conclusion that the suit is not maintainable, merely because the petitioner has an alternative remedy. The learned Counsel further submits that as the learned Judge

exercised the jurisdiction illegally, this Court in exercise of its powers under Article 227 of the Constitution can correct such orders in the present writ petition. The learned Counsel has, thereafter, taken me through the impugned order to point out that the learned Judge has erroneously exercised the jurisdiction by dismissing the suit.

6. Mr. Ramani, learned Counsel appearing for the respondents, on the other hand, with regard to the merits of the contentions raised by Mr. A. D. Bhobe, learned Counsel appearing for the petitioner has pointed out that without prejudice to his first submission that the petition itself is not maintainable, he fairly does not dispute that the exercise of jurisdiction by the learned Judge in dismissing the suit is not in accordance with law.

7. I have duly considered the submissions of the learned Counsel appearing for the parties and I have also gone through the records. The Judgment of the Apex Court relied upon by Mr. Ramani, learned Counsel appearing for the respondent in the case of ***Rajni Rani and another vs. Khairati Lal and others (supra)*** is wherein the Apex Court has taken a view that the question of invoking the jurisdiction under Section 115 of CPC is not permissible where the

dispute is finally adjudicated and an appeal was provided in terms of law.

8. With regard to the facts in the present case, I find that the learned Judge has not at all touched the merits of the rival dispute between the parties. There is no final adjudication of the dispute between the parties. The learned Judge has taken a view that the suit was not maintainable because an alternate remedy was available to the petitioner. Taking note of the fairness of Mr. Ramani, learned Counsel appearing for the respondents No.1 and 2 that this view of the learned Judge is not in accordance with law, I find that the impugned Order to that effect cannot be sustained and deserves to be quashed and set aside.

9. With regard to the contention of Mr. Ramani, learned Counsel appearing for the respondents that the petition itself is not maintainable as the petitioner has an alternative remedy of preferring an appeal, this Court in an unreported Judgment dated 25th February, 2013 in Writ Petition No.285/2011 in the case of ***Mrs. Rucha Chodankar v/s. Mast. Ramit Ranganath Chodankar and another***, in similar circumstances has noted at para 7 thus :

“7. A writ can be issued for correcting errors of jurisdiction committed by inferior Courts in cases when the orders are passed by the inferior Courts without jurisdiction or in an excess of it or as a result of failure of exercise of jurisdiction. A writ can be similarly issued in exercise of jurisdiction conferred on it if the Court acts illegally or improperly as for instance it decides a question of law without following the procedure in dealing with such matter in accordance with law. The jurisdiction of the High Court to issue a writ is a supervisory jurisdiction and the Court exercising it, is not entitled to act as an Appellate Court. The limitations necessarily means that the findings of fact reached by the inferior Courts as with regards to the appreciation of evidence, cannot be re-opened by a writ Court. Similarly, when it is shown that the finding of facts are based on no evidence, this can be regarded to be an error which can be corrected by a writ of certiorari. Thus, in cases in which the Court finds that the inferior Court has exercised its jurisdiction illegally and in total contrary to the provisions of law, the High Court can interfere so as to ensure that the sub-ordinate Courts limit itself to its jurisdiction. No doubt, such power is discretionary and has to be exercised very sparingly unless it is shown that the Orders passed by the inferior Court is a nullity and

contrary to the provisions of law and would occasion failure of justice to the opposite side. The objects of superintendence under Article 227 of the Constitution of India, is to maintain effective smooth and orderly function of the Courts below and to ensure that the Courts below function in accordance with law. Such jurisdiction is also equitable in nature and while exercising such jurisdiction, the High Court does not only act as a Court of law but also as a Court of equity. It is, therefore, necessary that the power of superintendence must advance the ends of justice and are passed in justice. Keeping in mind the said well settled principles, it would be appropriate to consider the matter in controversy in the above Writ Petition. ...”

This Court has taken a view that when a patently erroneous order is passed, in erroneous exercise of jurisdiction, it does not preclude the Court from exercising its power of superintendence under Article 227 of the Constitution. A SLP filed against the said order of this Court in Petition(s) for Special Leave to Appeal (Civil) No(s).20000/2013 came to be dismissed by an order dated 12th July, 2013.

10. Considering the view taken by this Court in the case of

Mrs. Rucha Chodankar v/s. Mast. Ramit Ranganath Chodankar and another (supra), the contention of Mr. Ramani, learned Counsel appearing for the respondents that the writ petition itself is not maintainable cannot be accepted. Hence, I find that the impugned Order cannot be sustained and deserves to be quashed and set aside.

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

ORDER

(I) The impugned order dated 7/9/2013 passed by the learned Civil Judge, Junior Division 'B' at Ponda in Regular Civil Suit No.67/2010/B is quashed and set aside.

(II) Regular Civil Suit No.67/2010/B is restored to the file of the learned Civil Judge, Junior Division at Ponda and the learned Judge shall proceed to dispose of the suit in accordance with law.

(III) Rule is made absolute in the above terms, with no order as to costs.

F.M. REIS, J.

ssm.