

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL REVISION APPLICATION NO. 44/2014**

1. Smt. Sebastiana Fernandes
alias Maslin alias Sebastiana Fernandes
e Carvalho, widow of late
Shri Agostinho Francisco de Piedade
Prudencio Carvalho, aged 78 years,
housewife, r/o H. No. 1283,
Mazilwaddo, Benaulim,
Taluka Salcette, Goa.
For self & POA for 6.7.9 & 11.
2. Smt. Monica Carvalho e Vaz
daughter of late Shri Agostinho Francisco
de Piedade Prudencio Carvalho,
major of age,
r/o Pedda, Varca, Salcete, Goa.
3. Smt. Juliana alias Julie e Carvalho
e Barreto, daughter of late
Shri Agostinho Francisco de Piedade
Prudencio Carvalho,
major of age, housewife,
resident of Fatrade, Varca,
Taluka Salcete, Goa.
4. Shri Antonio Barreto,
major of age, landlord,
resident of Fatrade, Varca,
Taluka Salcete, Goa.
5. Smt. Maria Carvalho e Fernandes,
daughter of late Shri Agostinho
Francisco de Piedade Prudencio
Carvalho, major of age, housewife,
r/o H. No. 1283, Mazilwaddo, Benaulim
Taluka Salcete, Goa.
6. Shri. Tito Fernandes,

major of age, landlord,
r/o H. No. 1283, Mazilwaddo, Banaulim,
Taluka Salcete, Goa.

7. Shri Moises Carvalho,
son of late Son of late
Shri Agostinho Francisco de Piedade
Prudencio Carvalho, major of age, service,
r/o H. No. 1283, Mazilwaddo, Banaulim
Taluka Salcete, Goa.
8. Smt. Basilia Rodrigues,
major of age, housewife,
r/o H. No. 1283, Mazilwaddo, Banaulim,
Taluka Salcete, Goa.
9. Shri Marconi Carvalho,
son of late Shri Agostinho
Francisco de Piedade Prudencio
Carvalho, major of age, service,
r/o H. No. 1283, Mazilwaddo, Banaulim
Taluka Salcete, Goa.
10. Smt. Milagrina Flaviana Rodrigues,
major of age, housewife
r/o H. No. 1283, Mazilwaddo, Banaulim
Taluka Salcete, Goa.
11. Smt. Fatima Carvalho,
daughter of late Shri Agostinho
Francisco de Piedade Prudencio
Carvalho, major of age, housewife,
r/o H. No. 1283, Mazilwaddo, Banaulim
Taluka Salcete, Goa.
12. Smt. Pia Carvalho,
daughter of late Shri Agostinho
Francisco de Piedade Prudencio
Carvalho, major of age, housewife,
r/o H. No. 1283, Mazilwaddo, Banaulim
Taluka Salcete, Goa.

13. Shri Desmond Vaz,
of major age, landlord,
r/o Pedda, Varca, Salcete, Goa. ... APPLICANTS.

V/s.

1. Smt. Adelina de Sacrada Familia
Carvalho e Fernandes alias Adolfina
Carvalho alias Adelfina Carvalho
(since deceased)
(represented by her purported legal
representatives) :-
 - a) Shri Maxie Afonso e Carvalho
(since deceased)
(through his purported legal
representatives) :-
 - i) Smt. Connie Jean Carvalho,
major of age, employed,
 - ii) Shri Andrew Marcus Carvalho,
major of age, employed,
 - iii) Shri Dominic Joe Carvalho,
major of age, employed,
2. Miss Aramita Carvalho,
daughter of late Shri Jose Manuel
Carvalho, major of age,
3. Shri Archibaldo Carvalho,
son of late Shri Jose Manuel
Carvalho, major of age,
employed.
4. Smt. Audry Carvalho,
daughter of late Shri Jose Manuel
Carvalho, major of age,
5. Shri Christopher James,
son of Jimmy James,
major of age, employed

The Respondents nos. 1 (a)(i), (ii), (iii), 2, 3, 4 and 5 are all represented through their Attorney, Shri Derrick Rodrigues, son of late Shri Socorro Rodrigues, of major age, employed and resident of H. No. 9, Olvaddo, Carmona, Taluka Salcete, Goa.

6. Shri Filipe Espirito Santo Carvalho e Leitao, major of age, resident of Bamado, Chinchinim, Taluka Salcete, Goa
7. Smt. Flaviana Carvalho, resident of Bamado, Chinchinim, Taluka Salcete, Goa
8. Shri Xavier Carvalho e Leitao, son of late Shri Leopoldo Claro Carvalho, major of age, resident of Bamado, chinchinim, Taluka Salcete, Goa
9. Smt. Ida Carvalho, major of age, resident of Bamado, Chinchinim Taluka Salcete, Goa
10. Smt. Marina Carvalho e Leitao, daughter of late Shri Leopoldo Claro Carvalho, major of age, resident of Sudha Building, Ground Floor, Room No.15, Patel Compound, 20 Nepean Sea Road, Mumbai – 400 036.
11. Shri Constancio D'Mello, major of age, resident of Sudha Building,

Ground Floor, Room No.15,
Patel Compound, 20 Nepean Sea Road,
Mumbai – 400 036.

12. Shri Remedios Fernandes,
major of age, service,
r/o H. No. 1283, Mazilwaddo, Benaulim,
Taluka Salcete, Goa.
13. Shri Freddy D'Sa,
major of age,
r/o H. No. 1283, Mazilwaddo, Benaulim,
Taluka Salcete, Goa.

.... RESPONDENTS

Shri Thalmann Pradeep Pereira, Advocate for the applicants.

Shri Sudesh Usgaonkar, Advocate for the respondents No. 1a(i) to (iii) 2 to 5

CORAM :- F.M. REIS. J.

Date : - 12th June , 2015.

ORAL ORDER :

Heard Shri T. Pereira, learned Counsel appearing for the petitioners and Shri Sudesh Usgaonkar, learned Counsel appearing for the respondents.

2. Upon hearing the learned Counsel appearing for the respective parties, it is seen that the grievance of the petitioners is that the application to set aside abatement and bring on record the LRs. of

the deceased plaintiffs, along with an application for condonation of delay, came to be filed by the attorney who had no authority to file such applications. It is pointed out by Shri Usgaonkar, learned Counsel appearing for the respondents that the fresh power of attorney is executed by the LRs. in favour of the earlier attorney and the same was produced on record alongwith an application dated 19th November, 2012. Shri Usgaonkar has also brought to my notice an application dated 18th February, 2011 filed by the Advocate informing the death of the deceased plaintiff under Order 22, Rule 10A of the Civil Procedure Code. It is also not disputed that the said application filed by the learned Advocate was within the time prescribed.

3. Shri T. Pereira, learned Counsel appearing for the petitioners does not dispute the fact that the original suit came to be filed by the mother of the LRs. who was already on record as defendants No.22 to 26. As the LRs. were already parties to the suit, the question of alleging that there was abatement of the suit in view of the death of the sole plaintiff would not arise at all. Apart from that, the suit was for partition and consequently, the question of holding that the suit has abated would not at all arise. The application filed by the original defendants No.23 to 26 has, in fact, to be treated as an

application for transposition of the said defendants as plaintiffs as they desired to proceed with the suit for partition. As far as the original defendant No.22 is concerned, it is pointed out by the learned Counsel appearing for the petitioners that he had expired on 7th May, 2008 and no LRs., were brought on record within the time prescribed. But, it is also not disputed that the said deceased had not filed a written statement and, as such, the Lower Appellate Court was justified to set aside the abatement and bring the LRs., of the deceased defendant No.22 as co-plaintiffs in the suit.

4. The impugned order passed by the learned Lower Appellate Court is to advance the cause of justice and consequently, the question of interference by this Court in the present revision application does not arise, as there is no jurisdictional error committed by the learned Lower Appellate Court whilst passing the impugned order.

5. Hence, I find no reason to interfere with the impugned Order. Revision application stands accordingly dismissed.

F.M. REIS, J.

ssm.