

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.17 OF 2014

Mr. Ricardo Joaquim Inancio
Martinho De Souza
Son of late George Ricardo
Hipolito Romulado de Sousa
Age 68 years, married,
Residing at House no.255,
Gauvoim, Thivim, Ba5rdez, Goa.

Through duly constituted Attorney
Mr. Aniceto D'Souza,
Son of Mr. Jose Antonio Francisco
D'Souza, Major,
Resident of H. No.255,
Gavolim, Tivim, Bardez, Goa.

..... Petitioners

V e r s u s

1. Mrs. Laxami R. Korgaonkar,
Widow of Mr. Raghuvir Vassudev
Korgaonkar, Major of age, married.
2. Mr. Ajit R. Korgaonkar
son of Mr. Raghuvir Vassudev Korgaonkar,
Major of age, married.
3. Mrs. Lalita Korgaonkar,
Wife of Mr. Ajit R. Korgaonkar,
Major of age, married.
4. Mr. Deelip R. Korgaonkar,
son of Mr. Raghuvir Vassudev Korgaonkar,
Major of age, married.
5. Mrs. Deepali Deelip R. Korgaonkar,
Wife of Mr. Deelip R. Korgaonkar,
Major of age, married.

6. Mr. Pradeep R. Korgaonkar,
son of Mr. Raghuvir Vassudev Korgaonkar,
Major of age, married.
7. Mrs. Sunita Korgaonkar,
Wife of Mr. Pradeep R. Korgaonkar,
Major of age, married.
8. Mr. Pramod R. Korgaonkar,
Son of Mr. Raghuvir Vassudev Korgaonkar,
Major of age, married.
9. Mrs. Purva Korgaonkar,
Wife of Mr. Pramod R. Korgaonkar,
Major of age, married.
10. Mr. Vassudev R. Korgaonkar,
Son of Mr. Raghuvir Vassudev Korgaonkar,
Major of age, bachelor.
11. Mr. Prashant R. Korgaonkar,
Son of Mr. Raghuvir Vassudev Korgaonkar,
Major of age, married.
12. Mrs. Josna Korgaonkar,
Wife of Mr. Prashant R. Korgaonkar,
Major of age, married.
13. Mrs. Sonali Mhapari,
Daughter of Mr. Raghuvir Vassudev Korgaonkar,
Major of age, married,
All resident at House No.430,
Canca Bandh, Mapusa, Bardez, Goa.
14. Mr. Atmaram Mhapari,
Son of Mr. Raghuvir Mhapari,
Major of age, married,
Residing at House No.14,
Kailashnagar, Assnora, Bardez, Goa.
15. Government of Goa,

Through Chief Secretary,
Secretariat, Alto Porvorim,
Bardez, Goa.

16. Government of Goa,
Through Director of Settlement and
Land Records,
Panaji, Goa. Respondents

Shri V. Menezes, Advocate for the Petitioners.

Shri P.A. Kamat, Advocate for the Respondents no.1 to 14.

Shri P. Faldessai, Additional Government Advocate for
Respondents no.15 and 16.

CORAM: C. V. BHADANG, J.
DATE: 18th MARCH, 2016.

ORAL JUDGMENT:

Admit.

The learned counsel waives service for respondents no.1 to 14 and the learned Additional Government Advocate waives service for respondents no.15 and 16. Heard finally by consent of the parties.

2. The respondent nos.1 to 14 have filed civil suit no. (old 71/2012) which is pending on the file of the learned District Judge-II at Panaji. That suit is for declaration and

permanent injunction. A perusal of the prayer clause 21 of the plaint would show that the respondent nos.1 to 14 are seeking permanent injunction restraining the petitioner/defendant from transferring, selling, alienating the suit property and further restraining the defendant and his agent, family, relatives or any person or persons from interfering in any manner in the suit property. The respondent nos.1 to 14 are also seeking a direction to the city survey department to restore the name of Gangabai Vassudeo Korgaonkar in the property card of the suit property.

3. It appears that the petitioner/defendant no.1 filed an application at Exhibit D-12 before the trial Court purportedly under Order 7 Rule 11 of Civil Procedure Code for rejection of the plaint. It was contended that the respondents/plaintiffs are claiming right through Ganga Gadekar/Ganga Vasu Korgaonkar. It was further contended that the documents attached to the plaint indicate that Ganga Gadekar was a party to the proceedings and even her statement was recorded on 25/3/1987. It was further

contended that she was held to be a trespasser by order dated 25/3/1987, which order was pronounced in her presence.

4. It was the material contention that as per Section 14 (4) and (5) of the Land Revenue Code the suit was required to be filed within one year from the date of the said order, i.e., 25/3/1987. It was contended that thus the suit having been filed on 4/2/2010 was barred by limitation.

5. The respondent nos.1 to 14/plaintiffs, contested the application. The learned Trial Court by an order dated 19/11/2013 rejected the application Exhibit D-12. Feeling aggrieved the petitioner/defendant no.1 is before this Court.

6. I have heard Mr. Menezes, the learned counsel for the petitioners, Mr. Kamat, the learned counsel for respondents no.1 to 14 and Mr. Faldessai, the learned Additional Government Advocate for Respondents no.15 and 16.

7. It is submitted by the learned counsel for the petitioners that going by the allegations in the plaint itself and the documents annexed thereto, the suit would be barred by limitation. The learned counsel has referred to the contents of the plaint and in particular, para no.17 which sets out the date of accrual of the cause of action, in order to submit that the cause of action cannot be said to have arisen on 27/1/2010, when a notice was published in the newspaper for disposing the property. It is also submitted that the prayer clause 21 (b) would not be competent in the absence of the city survey authority being a party.

8. Mr. Kamat, the learned counsel for respondents no.1 to 14 has supported the impugned judgment and order.

9. The State being a formal party, the learned Additional Government Advocate had nothing much to add.

10. On hearing the learned counsel and on perusal of the record, it appears that the learned trial Court has found that the respondents/plaintiffs are not challenging the order

dated 25/3/1989. The learned trial Court found that the plaintiffs challenged the order dated 10/5/1986 by which the name of the petitioner/defendant was ordered to be entered in the survey record. The learned trial Court has also found that the name of Ganga V. Korgaonkar as a trespasser, in the other remarks column was omitted in view of the judgment passed by the Deputy Collector, Mapusa on an application filed by the petitioner on 8/7/1981. The learned trial Court found that the application was not in respect of P.T. Sheet no.70 Sub Division 4/11 (which is the the suit property). The learned trial Court ultimately found that the aspect as to whether the plaintiff would be aggrieved by the order dated 25/3/1989 will have to be decided on merits and thus refused to reject the plaint.

11. The learned counsel for the petitioners alternatively submitted that the petitioners shall raise all the available defences/contentions including limitation before the trial Court and the trial Court may be directed to decide the issue of limitation as a preliminary issue.

12. The learned counsel for respondent nos.1 to 14 submits that this aspect may also be left to the discretion of the trial court. He only submits that in the event the trial court proceeds to decide the issue of limitation as a preliminary issue, the parties will be at liberty to lead evidence, oral and documentary, as may be advised.

13. Considering the fact that the suit is pending from the year 2010 and is still at the preliminary stage and having regard to the submissions made at the bar, the following order is passed:

(i) The petitioners shall file a comprehensive written statement before the trial court, if not already filed, raising all the available contentions including the plea about the suit being barred by limitation.

(ii) The Learned trial Court shall raise appropriate issues on the basis of the rival pleadings, including the issue of limitation.

(iii) It would be open to the petitioners to request the learned trial court to decide the issue of limitation as a preliminary issue. The learned trial court shall pass

appropriate orders on the question of deciding the issue of limitation as a preliminary issue, after hearing the parties.

- (iv) In the event the learned trial court decides to deal with the issue of limitation as a preliminary issue, the same shall be decided after giving appropriate opportunity to the parties to lead oral and documentary evidence and after hearing the parties in accordance with law.

14. The Civil revision application is disposed of in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/-