

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.300 OF 2016**

MEGHASHYAM RAMCHANDRA
NAIK AND 4 ORS.

....PETITIONERS

V/S

MAHENDRA PURUSHOTTAM NAIK
GAUNEKAR AND 3 ORS.

....RESPONDENTS

Shri I. Agha, Advocate for the Petitioners.
Shri Abhay Nachonolkar, Advocate for Respondents
No.3 & 4.

CORAM : C.V. BHADANG, J.

DATE : 23rd AUGUST, 2016

ORAL ORDER :

The petitioner, who is the plaintiff in Regular Civil Suit No.99/2006/C before the learned Civil Judge Junior Division at Ponda is challenging the order dated 29/02/2016 (below exhibit 150) passed by the learned Trial Court by which the application (exhibit 150) seeking to add Village Panchayat of Bandoda as a party defendant, to the suit, has been dismissed.

2. The brief facts are that the petitioners

have filed the aforesaid Suit for a declaration that the Deed of Transfer dated 13/11/2003, which is registered on 5/10/2004 is null and void and for a consequential relief of cancellation of the said deed. There are various other reliefs claimed. For the present purpose, prayer clauses c(a) and c(b) are relevant which read thus:

c.a. By an Judgment, Decree and order be issued to village Panchayat Bandora to delete the name of Smt. Malkumi Naik from Form No.8, with respect to House No.48 of village Panchayat Bandora, Taluka Ponda Goa.

c.b. By an judgment, decree and Order be issued to village Panchayat Bandora to incorporate name of Plaintiffs in the record of Form No.8, with respect to House No.48 of village Panchayat Bandora, Taluka Ponda Goa.

3. The case made out in the plaint is that on the basis of an affidavit sworn by late Smt. Malkumi Naik, the name of respondent no.3 (defendant no.3 before the Trial Court) has been illegally included in form no.8 in respect of

house no.48. In that view of the matter, the direction is sought to the Village Panchayat Bandoda, to delete the name of Smt. Malkumi Naik from form no.8 in respect of house no.48 and to incorporate the name of the petitioners therein.

4. The application for impleadment was filed, when the suit was at the stage of hearing of final arguments. The learned Trial Court has found that there is no justification for the petitioners in failing to take steps at the earliest to add Village Panchayat if it was a necessary party. Secondly it has been found that the petitioners 'have not made out any cause of action to implead the Village Panchayat as defendant'. The learned Trial Court has further observed that if any order is passed by the Civil Court the same would be binding on Village Panchayat and for that purpose the Village Panchayat is not required to be "necessarily impleaded".

5. I have heard the learned Counsel for the petitioners and the learned Counsel appearing for the respondents.

6. The learned Counsel for the petitioners submits that although the application was filed at the stage when the suit was fixed for final arguments, under Order 1 Rule 10(2) of the Civil Procedure Code, such application can be entertained at any stage of the proceedings. The learned Counsel submits that for the purposes of proper and complete disposal of the matter in issue, the Village Panchayat would be a necessary party and the same would avoid multiplicity of the proceedings in the event the Village Panchayat fails to comply with the decree passed in favour of the petitioners. The learned Counsel for the petitioners also submits that the petitioners being the plaintiffs are dominus litus and can decide as to who should be arrayed as party defendant/s in the suit. The learned Counsel has placed reliance on the

decision in the case of ***Shri Suryakant Sada Kuttikar & Anr. V/s. Shri Pandurang Sada Kuttikar & Ors. in Writ Petition No.715/2014 decided on 29/09/2015.***

7. On the contrary, it is submitted by the learned counsel for the respondents that application was belated and there is no reason forthcoming, as to why such application was not filed for about 10 years, after filing of the suit. The learned Counsel further pointed out that there is no relief as such claimed against the Village Panchayat, except for a direction to delete the name of Smt. Malkumi Naik from form No.8 of suit house and about inclusion of the name of the petitioners. The learned Counsel points out that the Trial Court has also observed that any decree passed by the Civil Court, would be binding on the Village Panchayat.

8. I have carefully considered the rival

circumstances and the submissions made. There cannot be any manner of dispute with the proposition that the plaintiffs being dominus litus can decide as to who should be arrayed as defendants. However, this right of the plaintiffs is subject to the powers of the Court under Order 1 Rule 10(2) of the Civil Procedure Code, to add or strike off parties. Before directing addition of a party, the Court has to either find that the proposed party is a necessary party or a proper party whose presence is necessary for the proper and complete disposal of the matter in issue. It cannot also be disputed that this power of the Court under Order 1 Rule 10(2) of Civil Procedure Code can be exercised at any stage of the proceedings. The question whether a particular party needs to be added either as a necessary party or a proper party, would depend upon facts and circumstances of each case. In the present case, the petitioners are primarily claiming a declaration that the Deed of Transfer dated 30/11/2003 is

null and void and for consequent cancellation of the same. It does not appear that there is any declaration sought that the mutation taken in form no.8 was taken illegally. Thus, in the event the petitioners succeed in getting a decree for cancellation of the Deed of Transfer it is obvious that the same would be binding on the Village Panchayat. The Trial Court has also observed that any decree by the Civil Court would be so binding.

9. Considering this, I do not find that any case for interference is made out. In the result, the petition is dismissed with no order as to costs.

C.V. BHADANG, J.

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