

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 699 OF 2016

MRS. JENNIFER MASCARENHAS AND ANR. ... Petitioner
Versus
MR. ROQUE FURTADO AND ANR. ... Respondent

Mr. Sandesh D. Padiyar with P. Arolkar, Advocates for the
Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 22nd July, 2016

P.C.:

The order challenged here is dated 8/1/2016, by which the learned Trial Court has refused to decide the issue no.5 as a preliminary issue. Issue no.5 is regarding the suit being bad for non joinder of necessary parties. Indisputably, the respondent no.1/plaintiff had filed an application, Exhibit 28 for addition of Mrs. Piedade Braganza, Damasceno Dias and Mrs. Idalina Dias as defendant nos. 4,5 and 6 which was rejected by the Trial Court on 31/7/2015. This according to the learned counsel for the petitioner would be sufficient to take up the issue no.5 as a preliminary issue. He submits that the suit is for declaration and thus all the co-owners are necessary parties. Reliance is placed on the decision of this Court in the case of YESHWANT SIURAM POROBO, RAGHUATH SHAMBA

POROBO, VAMONA SHAMBA POROBO, BABLO APPA POROBO, ANANT APPA POROBO AND OTHERS VS. GAGARAMA LOXIMONA SHET GAUNKAR dated 10/9/1987. He therefore submits that the Trial Court ought to have allowed the application Exhibit 28.

2. Under order 14 Rule (2) of C.P.C., the Court is obliged to decide an issue regarding jurisdiction of the Court or pertaining to the issue regarding bar to the suit created by law as a preliminary issue. The provisions of Order 14 Rule 2 (2) of C.P.C. would show that the Court may if it deem fit in such circumstances postpone the settlement of the other issue i.e. after the issue regarding jurisdiction or a bar of law is determined. It can be thus seen that there is a discretion vesting in the Court to take any such issue as a preliminary issue.

3. The learned Trial Court in the impugned order has found that opportunity will have to be given to the parties to lead evidence on the said issue and as such, has refused to take up issue no.5 as a preliminary issue. The learned counsel states that the suit which is of the year 2013 is already ripe for hearing. Considering the overall circumstances, I do not find that any case for interference is made out in the exercise of the supervisory jurisdiction of this Court as the impugned order cannot said to have resulted in any manifest

injustice. The petition is without any merit and is hereby dismissed.

C. V. BHADANG, J.

ap/-