

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.713 of 2016**

1. Mr. Kashinath Surendra Xete Colopo  
Alias Kashinath Surendra Khalap,  
Son of late Surendra Xete Colopo,  
Alias Surendra Khalap,  
Major of age, Indian National,  
resident of Flat No. 502,  
Block B, Kim Height,  
above Sub Registration Office,  
Morod, Mapusa, Bardez, Goa.
2. M/s Leading Hotels Pvt. Ltd.,  
(now M/s. Leading Hotels Ltd.)  
A Company incorporated under  
The Indian Companies Act,  
represented by their Authorized  
Representatives,  
Mr. P. Ravi,  
Son of late Shri. P. K. Rao,  
Major of age, having local  
office at 573,  
Road 4, La Campala,  
Miramar, Panaji, Goa.                      ..                      Petitioners

**Vs**

1. Mr. Manuel Pereira,  
Major of age,
2. Mrs. Magdalina Pereira,  
Major of age,
3. Mr. Francis Pereira,  
Major of age,
4. Mrs. Philomena Francis Pereira,  
Major of age,  
  
All residents of H.No. 92,  
P.O. Keri, Tiracol, Pernem, Goa.
5. Mrs. Aprejin Natvidad Fernandes,  
Major of age,

6. Mr. Natvidad Anthony Fernandes,  
Major of age,
7. Mrs. Ana Rosalina Lemos,  
Major of age,
8. Mrs. Clara D'Souza,  
Major of age,
9. Mr. Anthony D'Souza,  
Major of age,
10. Mrs. Anjelina Fernandes,  
Major of age,
11. Mr. Eric Fernandes,  
Major of age,
12. Mrs. Jelina Fernandes,  
Major of age,

All residents of house  
no. not known,  
P.O. Keri, Tiracol,  
Pernem, Goa.

... Respondents

Mr. Shivan Dessai, Advocate for the petitioners.

**CORAM :- C. V. BHADANG, J.**

**DATE:- 20<sup>th</sup> September, 2016**

**ORAL ORDER :**

On 03/08/2016, a notice for final disposal was issued to the respondents. None appears for the respondents, though served. The petition is, accordingly, taken up for final disposal.

2. I have heard the learned Counsel for the petitioners.

3. The petitioners have filed Tenancy Case No.37/2015 before the Civil Judge, Junior Division at Pernem for a negative declaration under Section 7 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (the Act, for short). The said case was filed in February, 2015. The summons was issued on 05/05/2015 and was made returnable on 30/06/2015, on which date, the summons was returned unserved. The petitioners filed an application for bringing the legal representatives of the respondent no.1 i.e. Manuel Pereira on record on 13/07/2015. It appears that the Trial Court issued summons both in the main application as well as on the application for bringing the legal representatives of deceased respondent no.1 on record. However, by the impugned order, the learned Trial Court has dismissed the application for bringing the legal representatives on record on the ground that the petitioners were aware that the opponent no.1 had expired much before filing of the

main application. The learned Trial Court, after noticing the decision of the Hon'ble Supreme Court in the case of **KARUPPASWAMI SWAMI Vs. RAMMURTHY**; [AIR 1993 SC 2324], has found that because the petitioners were aware of the death of opponent no.1 much prior to filing of the proceedings, the application could not be allowed.

4. It is submitted by the learned Counsel for the petitioners that it was purely out of inadvertence that the Tenancy Proceedings came to be filed with the name of the opponent no.1 Manuel Pereira on record. The learned Counsel points out that the widow of Manuel Pereira, namely Magdalena Pereira is already on record as opponent no.2 before the Trial Court. It is submitted that merely because the petitioners were aware of the death of the opponent no.1 prior to the filing of the proceedings, would not disentitle them from bringing on record the legal representatives of opponent no.1 on record. The learned Counsel has pointed out the provisions of Sections 17(2) and 17(3) of the Mamlatdar's Court Act, (the Act, for short) in order to submit that the Mamlatdar may at any stage of

the proceedings, direct addition of a party, whose presence appears necessary, in order to enable the Court to effectually and completely adjudicate upon the issue. It is submitted that under Section 17(3), there is a general power to bring on record the legal representatives of a deceased party. He submits that the decision of the Hon'ble Supreme Court in **KARUPPASWAMY** (supra) would apply where the party intends to take benefit of the proviso to Section 21(1) of the Limitation Act, which does not arise in the present matter.

5. I have considered the circumstances and the submissions made. I have gone through the impugned order.

6. It appears that the petitioners filed an application for bringing the legal representatives of opponent no.1 on record shortly after the first returnable date. The proceedings are filed in February, 2015, while the application for bringing the legal representatives came to be filed on 13/07/2015 and the Trial Court had issued summons both on the

main application and the application for bringing legal representatives on record. Merely because the petitioners were aware of the death of opponent no.1 and it is claimed that out of inadvertence, the names of the legal representatives were not arrayed as party opponents, would not preclude the Court from bringing the legal representatives on record, if it is necessary for effective disposal of the matter. It would be significant to note that the widow of the deceased is already on record as opponent no.2 and as such, there is no question of any abatement.

7. In case of **KARUPPASWAMY** (supra), the suit was filed against a dead person and the plaintiff became aware of the death of the defendant from the remark on the summons, which was returned and sought impleadment of the legal representatives promptly thereafter. It was in these circumstances held that the plaintiff would be entitled to invoke proviso to Section 21(1) of the Limitation Act, which says the suit as regards such added party, shall be deemed to have been instituted on any earlier date. In the present case, this question would not arise, in as much as, the time

spent between filing of the proceedings and the filing of an application for bringing the legal representatives on record is hardly of five months.

8. In that view of the matter, the petition is allowed. The impugned order is hereby set aside. The application Exh.7 is allowed as prayed. The petitioners shall carry out necessary amendment, within a period of two weeks from today.

**C. V. BHADANG, J.**

SMA