

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 683 OF 2016

SHRI. KRISHNA ARJUN MAPARI (DEC)
THR. LRS AND ANR.

... Petitioner

Versus

MAHADEO SITARAM KAKODKAR (DEC)
THR. LRS.

... Respondent

Shri Ashwin D. Bhobe, Advocate for the petitioner.
Shri R. G. Ramani, Advocate for the respondent nos.1(a) to 1(d).

Coram:- F. M. REIS, J.

Date:- 15th November, 2016

P.C.

Heard Shri A. D. Bhobe, learned Counsel appearing for the petitioner and Shri R. G. Ramani, learned Counsel appearing for the respondents no.1(a) to 1(d).

2. This Writ Petition takes exception to the order dated 3.6.2016 passed by the learned Senior Civil Judge, Quepem whereby an application filed by the legal representatives of the decree-holders came to be allowed. Mr. Bhobe, learned counsel appearing for the petitioners pointed out that Execution Proceedings filed by the original deceased decree-holder was for mandatory injunction as well as permanent injunction. The learned Counsel further points out that the respondents no.1(c) and 1(d) had filed an application to make them parties to such execution application which came to be rejected by order dated 17.10.2015. The learned Counsel further points out that as such application came to be rejected the question of filing the

present execution application by all the legal heirs of the deceased decree holder was not maintainable and in any event barred by law of limitation. The learned Counsel further pointed out that grave prejudice would occasion to the petitioner as according to him execution proceedings for executing an order of mandatory injunction has to be filed within three years which right accrued to the petitioners would be defeated in case the impugned order is allowed to stand. The learned Counsel further points out that there is no question of bringing the legal heirs on record, as according to him, the property is alleged to have vested only in favour of the respondents no.1(c) and 1(d) and consequently, the remaining legal heirs have no right accrued in the execution proceedings. The learned Counsel has thereafter taken me through the impugned order to point out that this aspect has not been considered by the learned Judge while passing the impugned order.

3. On the other hand Shri R. G. Ramani, learned Counsel for the respondents has submitted that the question of limitation, if any, at the most may affect the relief of injunction and under no circumstances can affect the right of the legal heirs to execute the decree of permanent injunction. The learned Counsel further points out that the original application filed by the respondents no.1(c) and 1(d) was dismissed on the ground of maintainability as the application to make them parties to the proceedings was not maintainable. The learned Counsel further as such points out that there is no jurisdictional error committed by the learned Judge while

passing the impugned order which calls for inference of this Court.

4. I have considered the rival submissions and I have also gone through the record. The short point for consideration was whether the legal heirs of the deceased decree holder could be brought on record. All the other defences sought to be raised by the respondents/judgment debtors are matters which can be examined in the execution proceeding in case the petitioner is so advised file an additional reply to the execution application. In the present case, the fact that the respondents are the legal heirs of deceased decree holders has not been disputed. Whether the subject property devolves only on some of the legal heirs or not in any event would not affect the right of the respondents to file an application to bring themselves on record to proceed with the execution application as the decree holder has expired. The Execution Proceedings cannot be abated in terms of Order 22 of the CPC.

5. In such circumstances, I find that the impugned order has not resulted in any jurisdiction error which would call for interference of this Court in the present Writ Petition.

6. Keeping all the contentions of the parties open, the petitioner if so advised may file an additional reply. There is as such no case made out for interference under Article 227 of the Constitution of India. Hence, petition stands dismissed.

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