

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.31 of 2015

Shri Surya M Shirodkar
(since deceased)
through

1. Mrs Shailya Devidas Naik,
58 years,
daughter of Surya Mahadev Naik
and her husband

2. Devidas Vaikunt Naik, son of
Vaikunt Devidas Naik, 59 years
both residing at Sanvordem, at
present at Thal, Shiroda, Ponda,
Goa

.. Petitioners

Versus

1. Amardeep Gokuldas Gayak
Madkaikar, son of Gokuldas
Madkaikar
2. Nilesh Gokuldas Gayak Madkaikar
son of Gokuldas Madkaikar,
Resps. 1 and 2 residing at H.No.8,
near Navadurga Temple, Madkaim,
Ponda, Goa
both are major of age

3. Bank of India, Shiroda Branch
with branch office at Kamakshi
Sadan P.O. Shiroda, Ponda, Goa
represented by its branch Manager .. Respondents

Mr. M. B. D'Costa, Senior Advocate with Ms. K. Betquekar,
Advocate for the petitioners.

Mr. Valmiki Menezes, Advocate for the respondent nos.1 and 2.

Mr. N. Vaze, Advocate for the respondent no.3.

CORAM :- S. B. SHUKRE, J.

Date : 11th February, 2016.

ORAL JUDGMENT :

Heard Shri M. B. D'Costa, learned Senior Counsel for the petitioners, Shri Valmiki Menezes, learned Counsel for the respondent nos.1 and 2 and Shri Vaze, learned Counsel for the respondent no.3.

2. Rule. Rule made returnable forthwith. Heard finally by consent.

3. After having heard the learned Senior Counsel and learned Advocate for the respective parties, I find that there are two documents, which are central to the determination of the controversy involved in the suit, from which this petition arises. These two documents are Deed of Succession dated 27/06/2007 and Birth Certificate dated 08/06/1993 of Shailya. Both these documents have been challenged substantially by the respondents herein in Regular Civil Suit No.33/2010/A. This suit is still pending. The result of this suit, having considered the challenge raised therein, would have a profound bearing on the controversy involved in this case and, therefore, I am of the view that the

learned Senior Civil Judge, Ponda ought not to have expressed any opinion at this stage as regards the contentions of the parties and as such, ought not to have passed the order of abatement of suit, which is the order impugned herein.

4. In the result, I find that the order dated 16/04/2015 cannot be sustained in the eye of law and it must go. This order impugned herein, is hereby quashed and set aside. It is directed that the suit be restored to the file of learned Senior Civil Judge, Ponda. It is further directed that after restoration of the suit, the proceedings of the suit shall be kept in abeyance till the Regular Civil Suit No.33/2010 also pending before the Court of Senior Civil Judge, Ponda, is decided finally. Regular Civil Suit No.33/2010 shall be finally disposed of by the learned Senior Civil Judge as expeditiously as possible and in any case, within one year from the date of the order.

5. In these terms, the Writ Petition is disposed of. Rule is made absolute accordingly. No costs.

S. B. SHUKRE, J.

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