

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 591 OF 2015**

1. Society of Tari's, Volvoi, Ponda, Goa.

A Society registered under Society Registration Act, 1860, bearing No.70/GOA/2000, represented through it's Attorney of Board of Administrators, Shri Vinayak Jagannath Tari, having its office at Volvoi, Ponda, Goa.

2. Shri Vinayak Jagannath Tari, son of Jagannath Tari, age 77 years, occupation retired, Member of Board of Administrator, Society of Tari's, Volvoi, Ponda, Goa, residing at House No.146, Volvoi, Ponda, Goa.

3. Shri Shashidhar Narasinh Tari, son of Narasinh Tari, age 69 years, occupation retired Member of Board of Administrator, Society of Tari's, Volvoi, Ponda, Goa. Residing at House No.288, Volvoi, Ponda, Goa.

.... Petitioners

Versus

1. Shri Prabhakar Govind Tari, son of Govind Tari, age 66 years, occupation retired, resident of House No.488,

Ambarai, P.O. Savoi Verem,
P.O. Ponda, Goa.

2. Shri Nunu Ramnath Tari, son of Shri Ramnath Tari, age 56 years, occupation bargeman, House No. 63, Volvoi, P.O. Savoiverem, Ponda, Goa.
3. Shri Premanand @ Anna Pandurang Tari, son of Pandurang Tari, Flotilla staff, age 49 years, House No.123, Deulwada, Volvoi, Ponda, Goa.
4. Shri Ramdas Raghuvir Tari, son of Raghuvir Tari, occupation retired, House No.62, Volvoi, P.O. Savoiverem, Ponda, Goa.
5. Shri Satyvan Arjun Tari, son of Arjun Tari, age 56 years, occupation retired, House No.119, Adiwada, Volvoi, P.O. Savoiverem, Ponda, Goa.
6. Shri Sitaram @ Vishwas Namdev Tari, son of Namdev Tari, age 39 years, occupation private service, House No.122, Adiwada, Volvoi, Ponda, Goa.
7. Shri Hemchandra @ Mahipal Narayan Tari, son of Narayan Tari, age 43 years, occupation mechanic in

Kadamba, resident of House No. 55, Chaokhiwada, Volvoi, Ponda, Goa.

8. Shri Digamber Damodar Tari, son of Shri Damodar Tari, age 48 years, businessman, resident of house no. nil, Chowkiwada, Volvoi, Ponda, Goa.
9. Shri Narayan Tulaji Tari, son of Tulaji Tari, occupation retired primary teacher, age 67 years, Deulwada, Volvoi, P.O. Savoiverem, Ponda, Goa.
10. Shri Suresh Ramkrishna Tari Volvoikar, son of Ramkrishna Tari, age 56 years, House No. nil, Ramganga Niwas, Tivare, Zuvarwada, P.O. Marcel, Goa.
11. Shri Jagajivan Krishnanath Tari, son of Krishnanath Tari, age 60 years, House no. nil, New Pundalik Nagar, Saidham Hsg. Society, Porvorim, Bardez, Goa.
12. Shri Nagesh Tari, son of Pandurang Tari, age 69 years, Member of Board of Administrator, Society of Tari's, Volvoi, Ponda, Goa, resident of Chowkiwada, Volvoi, Ponda, Goa.

.... Respondents

Mr. Gajendra Usgaonkar, Advocate for the Petitioners.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita Palyekar, Advocate for the Respondents.

CORAM:- C. V. BHADANG, J.

DATE:- 27th JUNE, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Ms. Palyekar, learned Counsel waives service on behalf of the respondents. Heard finally, by consent of the parties.

2. By this petition, the petitioners/plaintiffs are challenging the order dated 19.04.2014 passed by the learned Civil Judge Senior Division at Ponda in Special Civil Suit No.9/2012. By the impugned order, the application filed by the petitioners to add Dr. Dhanesh Volvoikar as plaintiff no. 2(a) and Advocate Sudesh Volvoikar as plaintiff no. 5, has been rejected.

3. The brief facts are that the petitioner no. 1 is a Society registered under the Society Registration Act, 1860, of which the plaintiff nos. 2 to 4 and the respondent no. 12-Mr. Nagesh Tari (original defendant no. 12) are said to be the Members of the Board of Administrators.

4. The petitioners filed an application before the trial Court claiming that in a meeting of the Board of Administrators held on 30.12.2012, the respondent no. 12 was removed from the Board of Administrators, as he was not attending the meetings. It was contended that in his place, one Mr. Foti Vithu Tari, has been taken up on the Board of Administrators. The petitioners subsequently claimed that Mr. Foti Vithu Tari, has since resigned, therefore Advocate Sudesh Volvoikar was taken up on the Board of Administrators, in place of respondent no. 12. It was therefore prayed that Advocate Sudesh Volvoikar be added as plaintiff no. 5.

5. It was next contended that the plaintiff no. 2-Tulshidas Volvoikar died and in his place, it was resolved on 04.02.2013 to fill in the vacancy by Dr. Dhanesh Tulshidas Volvoikar.

6. The learned trial Court has found that the petitioners have relied upon the resolutions dated 30.12.2012 and 04.12.2013. The learned trial Court has found that the petitioners have neither produced on record the death certificate of plaintiff no. 2 nor the birth certificate of Dr. Dhanesh Volvoikar to show his relationship with the deceased plaintiff no. 2. Insofar as addition of Advocate Sudesh Volvoikar as plaintiff no. 5 (in the place of the respondent no. 5), is concerned, it was found that the affidavit filed by the said respondent no. 12 claims that the resolution dated 30.12.2012 was passed at his back and thus, was unauthorised and he was not aware of the resolutions dated 30.12.2012 and 04.12.2013. The learned trial Court found that

there is nothing on record to show that the respondent no. 12 has tendered his resignation from the Board of Administrators. In that view of the matter, the application came to be rejected.

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

8. On hearing the learned Counsel for the parties and on perusal of the record, it appears that substitution of Dr. Dhanesh Volvoikar cannot be said to be by way of bringing the legal representative of plaintiff no. 2-Tulshidas Volvoikar on record. The case is that in place of deceased plaintiff no. 2, the Board of Administrators has resolved to fill the vacancy by Dr. Dhanesh Volvoikar. In such circumstances, it cannot be expected that the petitioners would produce the birth certificate of Dr. Dhanesh

Volvoikar to show the relationship between deceased plaintiff no. 2 and Dr. Dhanesh Volvoikar. It is not disputed that the plaintiff no. 2 is dead. His death certificate is produced as annexure to the petition. In that view of the matter, I do not find that the reasoning articulated by the learned trial Court for rejecting the application for adding Dr. Dhanesh Volvoikar can be sustained.

9. Insofar as the addition of Advocate Sudesh Volvoikar as plaintiff no. 5 in the place of original defendant no. 12 is concerned, the case set up is that the defendant no. 12 was remaining absent and in terms of the resolution of petitioner no. 1, defendant no. 12 was removed and Advocate Sudesh Volvoikar has been taken up on the Board of Administrators. I find that subject to the right of the respondents to challenge any such resolution, the substitution can be allowed at this stage. I would hasten to add that this Court has not

expressed any opinion as to the legality of the resolution, seeking to remove respondent no. 12 and substitution of Advocate Sudesh Volvoikar, which shall be gone into by the trial Court, at the hearing of the suit. Subject to this, the impugned order will have to be set aside.

10. In the result, the petition is allowed. The impugned order is hereby set aside. The application filed by the petitioners is allowed. The learned trial Court shall allow the substitution as prayed, subject to the observations in paragraph 8 above.

Rule is made absolute in aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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