

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.673 of 2010

Chandru Krishna Raut
(Deceased through legal heirs)

1. Shri Rama Chandru Raut,
Major of age,
 2. Smt. Reshma Rama Raut,
Major of age,
 3. Shri Krishna Chandru Raut,
Major of age,
 4. Smt. Rekha Krishna Raut,
Major of age,
All residents of Madhalawada,
Sal, Bicholim-Goa
 5. Smt. Madhuri Gurudas Naik,
Major of age,
Resident of Manure,
Bicholim-Goa
- .. Petitioners

V/s.

1. Vaman Gopal Raut,
Major of age, agriculturist,
Legal heirs of Deceased
Respondent No.1
 - a) Gopal Vaman Raut,
 - b) Mrs. Deepti Gopal Raut,
 - c) Mr. Sandeep Vaman Raut,
 - d) Mrs. Geeta Sandeep Raut,
 - e) Ghanashyam Vaman Raut,
 - f) Meghashyam Vaman Raut,
 - g) Manish Vaman Raut
 All residents of Sal, Madhala
Vadda, Bicholim-Goa.
2. Smt. Laxmi Vaman Raut,
Major of age, housewife,
resident of Madhalavada,
Sal, Bicholim-Goa
Represented herein by their
son as Attorney holder
Mr. Sandeep Vaman Raut,
Major of age, r/o Sal,

Madhalavada, Bicholim-Goa

3. Mr. Namalo Budajio Raut alias
Deu Budaji Raut,
Major of age,
4. Mrs. Shrimati Namlo Raut,
Major of age,
Both resident of Madhalavada,
Sal, Bicholim-Goa
5. Mr. Shantaram Bugdo Raut,
Major of age,
6. Mrs. Shantabai Shantaram Raut,
(since deceased through
legal representatives)
Both resident of Madhalavada,
Sal, Bicholim-Goa
- 6(a). Ms. Pramila Shantaram Raut,
Major of age,
Daughter of the deceased,
- 6(b) Ms. Sangita Shantaram Raut,
Major of age,
Daughter of the deceased,
Both R/o Sal, Bicholim, Goa
(amendment is carried out as
per order dated 14/3/11 in
MCA 876/10)
7. Mr. Ladu Laximan Raut
(deceased through legal heirs)
- 7(a) Prabhavati Ladu Raut,
Major of age,
Wife of Ladu Laximan Raut,
- 7(b) Devendra Ladu Raut,
Major of age,
- 7(c) Laxman Ladu Raut,
Major of age,
- 7(d) Neeta Ladu Raut,
Major of age,
All resident of Madhalavada,
Sal, Bicholim-Goa

8. Mrs. Prabhavati Ladu Raut,
Major of age,
resident of Madhlavada,
Sal, Bicholim-Goa
9. Mr. Shiva Vasu Raut,
Major of age,
(since deceased)
(amendment is carried out
as per the order dated
13/1/2011)
10. Mr. Prabhakar Shiva Raut,
(deceased through legal
heir)
12(a) Prashila P. Raut,
Major of age,
resident of Madhalavada,
Sal, Bicholim-Goa.
11. Mr. Gurudas Shiva Raut,
Major of age,
12. Mr. Jana Shiva Raut,
Major of age,
13. Yogita J. Raut,
Major of age,
Both resident of Madhalavada,
Sal, Bicholim-Goa.
14. Mahadev Vishnu Raut,
Major of age,
15. Mrs. Mahadev Raut,
Major of age,
Both resident of Madhalavada,
Sal, Bicholim- Goa.
16. Mrs. Bhagirathi Chandru Raut,
resident of Madhalavada,
Sal, Bicholim-Goa.
(dispensed with from taking steps
as per order dated 13/1/11
passed in MCA 877/10) ... Respondents

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for the
petitioners.

Mr. S. G. Bhobe and Ms. N. Pimenta, Advocates for

the respondent nos.1(a) to 1(g) and respondent no.2.

CORAM :- C. V. BHADANG, J.

DATE :- 21st JULY, 2016.

ORAL JUDGMENT :

The challenge in this petition, at the instance of the Legal Representatives of the original defendant no.1, is to two orders both dated 26/07/2010 below Exh.77 and Exh. 79, passed by the learned Civil Judge, Senior Division, Bicholim in RCS No.153/2000.

2. The brief facts are that the respondent nos.1(a) to 1(g) and respondent no.2 have filed the aforesaid suit, in which the defendant nos.4, 5, 6, 7 and 12 were proceeded ex-parte. The defendant no.5 is the widow of defendant no.4- Deu Raut. Defendant no.4 died during the pendency of the suit on 18/05/2008. It appears that the respondents/plaintiffs initially filed an application under Order XXII, Rule 4(4) of the Code of Civil Procedure (CPC, for short), seeking exemption from bringing the legal representatives of deceased defendant no.4

on record, on the ground that the said defendant was already proceeded ex-parte. This application was dismissed by the Trial Court on 04/02/2009.

3. The learned Counsel for the respondents/ plaintiffs pointed out the rojnama dated 04/02/2009, in which the Trial Court has recorded that the plaintiffs can file an appropriate application in this regard. It appears that the respondents/ plaintiffs filed an application for bringing the legal representatives of defendant no.4 on record. The learned Trial Court dismissed the said application by an order dated 12/08/2007, inter alia, on the ground that the said application was not accompanied by an application for condonation of delay. It appears that the suit proceeded further and during the course of evidence of PW1, an objection was raised on behalf of the original defendant no.1 that the suit stands abated. This prompted the respondents/ plaintiffs to file an application (Exh.79) purportedly under Order I, Rule 10 of CPC for arraying the legal heirs of the deceased defendant no.4 on record. This application

has been allowed subject to costs of Rs.300/-. It appears that the original defendant no.1 filed an application Exh.77 for dismissal of the suit as having abated, which was rejected by the order of even date. These two orders are subject matter of challenge in this petition.

4. I have heard Shri A. D. Bhobe, the learned Counsel for the petitioners and Shri. S. G. Bhobe, the learned Counsel for the respondent nos.1(a) to 1(g) and respondent no.2. With the assistance of the learned Counsel for the parties, I have perused the impugned orders.

5. The only contention raised on behalf of the petitioners is that once the application filed by the respondents/ plaintiffs seeking exemption from bringing the legal heirs on record and the subsequent application for bringing the legal heirs on record, having been rejected, the Trial Court was not justified in allowing the application purportedly filed under Order I, Rule 10 of CPC. He submits that it was not permissible for the respondents to have circumvented the provisions of Order XXII to have a backdoor entry by incorporation of the

names of the legal heirs of the defendant no.4. The learned Counsel has placed reliance on the decision of Patna High Court in the case of **Minati Dutta and Others Vs. Sushil Chaudhary**; AIR 1006 PATNA 62.

6. On the contrary, it is submitted on behalf of the respondent nos.1(a) to 1(g) and respondent no.2 that the respondents had made all the attempts to bring the legal heirs of defendant no.4 on record. The learned Counsel was at pains to point out that once the wife of the defendant no.4 was there on record, the suit could not have abated and, therefore, the order dismissing the application under Order XXII, Rule 1 of CPC was not correct. He has placed reliance on the decision of the Supreme Court in the case of **Banwari Lal Vs. Balbir Singh**; (2016)1 SCC 607, in order to submit that substantial justice having been done in this case, this Court may not interfere.

7. I have carefully considered the rival circumstances and the submissions made.

8. It is not in dispute that the defendant no.5, being the wife of defendant no.4, was already there on record and as such, the suit cannot be said to have

abated for want of bringing the other legal representatives of defendant no.4 on record. It appears that as the defendant nos.4 and 5 were proceeded ex-parte, the respondents/ plaintiffs had initially sought exemption under Order XXII, Rule 4(4) of CPC and that application having been refused, had also filed an application under Order XXII, Rule 1 of CPC which was also rejected. It is true that the respondents/ plaintiffs would have done well to challenge the said orders as it was there specific case that the suit could not have abated, as one of the heirs was already on record. However, that was not done. It further appears that in spite of the rejection of these two applications, the suit proceeded further and it was during the course of the examination of PW1 that an objection was raised, when the respondents filed an application purportedly under Order I, Rule 10 of CPC, which has been allowed. The question is whether this Court would be justified in interfering with the said order in the exercise of its supervisory jurisdiction under Article 227 of Constitution of India and in my view, the answer has to be in the negative. I find that the plaintiffs have done all that was within their powers to bring the legal heirs on record and it cannot be said that there was any attempt to circumvent the

provisions of Order XXII, Rule 1 of CPC. The Supreme Court in the case of **Banwari Lal** (supra), has *inter alia* held that in such cases, the Court has to see that real, effective and substantial justice is done as the avowed object of any such procedural provision is to act in aid of justice. I find that merely because the respondents had not challenged the order of rejection of their application to bring the legal heirs on record under Order XXII Rule 1 of CPC, would not change the legal position that the suit cannot be said to have abated because one of the heirs was already on record. If that be so, merely because the application was styled as one under Order I, Rule 10 of CPC, would not make the order allowing the same vulnerable. In any event, the impugned order does not result in any manifest injustice to the petitioners. In my view, substantial justice having been done, it would not be appropriate for this Court to interfere with the said order. The petition is without any merit and is accordingly dismissed.

9. Rule is discharged, with no order as to costs.

C. V. BHADANG, J.

SMA