

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 706 OF 2015

MR. LEONARDO PETER THEOTONIO
D'SOUZA.

... Petitioner

Versus

MR. RAMESH BHIKAJI MAPXEKAR AND
ANR.,

... Respondents

Adv. Jagannath Jayant Mulgaonkar for the Petitioner.
Adv. Ashwin D. Bhobe for Respondent no.2

Coram:- C. V. BHADANG, J.

Date:- 28th March, 2016

ORAL ORDER:

By this petition, the petitioner, claiming to be the legal heir of the original plaintiff (Gabriel Romao D'Souza), is challenging the order dated 17/4/2015 passed by the learned Civil Judge, Senior Division, Bicholim in Special Civil Suit no.22/2011/A . By the impugned order, the application under Order 22 Rule 3 filed by one John Yuri Lobo (respondent no.2 herein) for bringing him on record as a legal heir of the deceased, plaintiff, on the strength of a Will dated 21/6/2006, has been directed to be inquired into.

2. It is submitted by the learned counsel for the petitioner that admittedly the petitioner is claiming to be the legal representative of the original deceased plaintiff (Gabriel D'Souza) on the basis of a registered Will dated 27/9/2011. The deceased plaintiff died on

17/11/2012. The learned counsel points out that by an order dated 20/11/2012 on an application (Annexure E to the petition), the petitioner was allowed to be brought on record as legal representative of the deceased plaintiff. It is submitted that subsequently the second respondent filed an application purportedly under Order 22 Rule 5 of C.P.C on the strength of a Will dated 21/6/2006. It is submitted that as the Will under which the petitioner is claiming is subsequent in point of time, to the Will under which the second respondent is claiming, it is the subsequent Will which would prevail. The learned counsel has placed reliance on the decision of the Hon'ble Apex Court in the case of MST. DEU AND OTHERS VERSUS LAXMI NARAYAN AND OTHERS, reported in (1998) 8 SCC 701, in order to submit that in the event of the document being a registered document, the second respondent cannot stake a challenge to the same, except by way of taking independent proceedings.

3. There is no appearance on behalf of the first respondent, who is the original defendant.

4. The learned counsel appearing for the second respondent, has supported the impugned order. He submits that the trial Court has only ordered an inquiry to decide whether the second respondent is the legal representative of the plaintiff.

5. I have considered the rival circumstances and the submissions

made. In terms of Order 22 Rule 5 of C.P.C. where a question arises as to whether any person is or is not a legal representative of the deceased plaintiff or the deceased defendant, such question, has to be determined by the Court. It can thus be seen that this question has to be determined by the Court in accordance with law. All that the trial Court has done, by virtue of the impugned order, is directing an inquiry as to whether the second respondent can claim to be a legal representative of the deceased plaintiff, on the strength of the Will of the year 2006. It is obvious that the petitioner can raise all the contentions as may be available to him both on law and facts before the trial Court and the trial Court shall decide the question in terms of Order 22 Rule 5 of C.P.C.. I do not find that any case for interference is made out. As such, I decline to entertain the petition. In the aforesaid circumstances, the petition is hereby dismissed with no order as to costs.

C. V. BHADANG, J.

ap/-