

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 827 OF 2016

SHRI. VITHOBA SHAMBA SHETYE AND
ANR.,

... Petitioners

Versus

ALFREDO ANTONIO MENEZES (DEC) THR.
HIS LRS. AND 6 ORS.,

... Respondents

Shri Ulhas K. Tari, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 10th October, 2016

ORAL ORDER :

Heard Shri Tari, the learned Counsel for the petitioners.

2. The petitioners are the original defendants in the suit before the Trial Court and appellants before the learned District Judge. It appears that some of the plaintiffs died during the pendency of the suit before the Trial Court and applications were made to delete these plaintiffs on the ground that the right to sue survives to the remaining plaintiffs. Admittedly, no orders were passed by the Trial Court on these applications. Subsequently, the suit was decreed against the petitioners retaining the same cause title. In the appeal, the summons addressed to the respondents/plaintiffs, who were dead, were returned unserved on the same ground that the respondents were dead. The petitioners filed an application Exhibit 15 seeking an order that the suit before the Trial Court had abated. The learned District Judge by

the impugned order has dismissed the application. The learned District Judge has found that the applications were filed by the surviving plaintiffs before the Trial Court and it was for the Trial Court to pass order for the legal representatives of the plaintiffs to be brought on record and to proceed with the matter after amending the cause title. The learned District Judge has found that no orders were passed on the said application. It has been found that as the surviving plaintiffs have complied with the requirements of law, the suit does not abate. In that view of the matter, the learned District Judge has found that it is now for the petitioners to take appropriate steps to serve the legal representatives and to proceed with the appeal.

3. It is submitted by the learned Counsel for the petitioners that in the absence of the legal representatives of the deceased plaintiffs being brought on record, the suit stood abated. It is submitted that it was for the appellate Court to hold that the suit was abated.

4. I have considered the circumstances and the submissions made. The learned District Judge has found and to my mind rightly so, that the applications were made by the surviving plaintiffs for deletion of the plaintiffs who were dead. However, no orders were passed on the said applications. In such a case, it is for the Court to see whether some of the surviving plaintiffs who are the legal representatives of the deceased plaintiffs are already on record. In that case the suit cannot abate.

5. Thus, at this stage, no exception can be taken to the impugned order refusing to hold that the suit had abated. Thus, keeping the contention whether the suit has abated, open, no case for interference is made out. The petition is without any merit and is accordingly dismissed in limine.

C. V. BHADANG, J.

NH