

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 3 OF 2015**

1. Shri. Mahadev @ Madhav Shablo Solienkar @ Gaude (since deceased through his legal heirs)

1.a. Shri Narayan Mahadev Gaude @ Solienkar, S/o Mahadev Gaude, of major age, Agriculture, resident of H. No. 241, Soliem wada, Honda, Sattari-Goa.

1.b. Smt. Miniki Narayan Gaude, aged 46 years, Housewife, r/o Ho. No. 241, Soliem wada, Honda, Sattari-Goa.

2. Shri Sunil Datta Shankar Gaude, s/o Shankar Gaude, aged 35 years,

3. Smt. Sunita Sunil Datta Gaude, w/o Sunil Datta Gaude,
Both r/o H. No. 416, Honda, Sattari, Goa.

4. Shri Krishna Shamba Solienkar (since deceased) through his legal heirs:

4.a. Shri Ulhas Venkatesh Solienkar, (adopted son of late Krishna), aged 44 years, Agriculturist, Married,

4.b. Smt. Sumitra Ulhas Solienkar, aged 35 years, Housewife, w/o Ulhas Solienkar,
Both Indian Nationals,
r/o Soliem, Sattari, Goa.

5. Shri Shamba Venkatesh Solienkar @ Gawde, Aged 47 years, Agriculturist, r/o Soliem, Sattari, Goa.

6. Smt. Shaila Shamba Solienkar @ Gawde, Aged 47 years, Housewife, r/o Soliem, Sattari, Goa.
Both are Indian Nationals.
7. Shri Vinayak Soko Gawde, Aged 36 years, Agriculturist, married,
8. Smt. Veenita Vinayak Gawde, Aged 25 years, Housewife,
Both Indian Nationals,
r/o Soliem, Sattari, Goa.
9. Shri Eknath Bablo Solienkar, unmarried, aged 27 years, s/o Bablo Solienkar, Indian National, r/o Soliem, Sattari, Goa.
10. Shri Gopal Budho Gawde, Aged 45 years, married, Agriculturist, s/o late Budho Gawde,
11. Smt. Gopika Gopal Gawde, w/o Gopal Gawde, housewife,
Both are Indian Nationals, r/o Soliem, Sattari, Goa.

.... Petitioners

Versus

1. Shri Pandu Saju Solienkar,
2. Smt. Kamal Pandu Solienkar,
Both are major in age, Agriculturist,
House No. 255, r/o Soliem, Honda,
Sattari, Goa.
3. Shri Sakho Mahadu Solienkar (since deceased) through his legal heirs

3.a. Shri Madu Sako Solienkar alias Gaude, age 57 years,

3.b. Smt. Saraswati Madu Gaude, 48 years,

Both are Indian Nationals, House No. 232/1, resident of village Soliem, Honda, Sattari, Goa.

And other heirs whose names and addresses are not known.

4. Shri Sukdo Fondu Gaudo (since deceased through his LR's)
Shri Fondu Sukdo Gaude, 55 years,

5. Smt. Rukmini Fondu Gaude, 45 years,
Both are Indian National, House No. 30/A, Resident of Honda, Gaunkarwada, Honda, Sattari, Goa.

6. Shri Rama Putu Solienkar (since expired)

6.a. Shri Surya Rama Gaude, 50 years,

6.b. Smt. Surekha Surya Gaude, 40 years,

Both Indian Nationals, resident of village Soliem, House No. 247/1, Honda, Sattari, Goa.

7. Shri Mahadev Barkelo Solienkar, resident of House No. 243, Ajoba Nagar, Honda, Sattari, Goa.

8. Shri Sagun Fondo Solienkar (since deceased)

8.a. Shri Nonlo Sagun Solienkar

8.b. Smt. Urmila Nonlo Solienkar,

Both resident of House No. 254,
Soliem, Honda, Sattari, Goa.
(Names and addresses of other heirs
are not known)

9. Shri Guno Malu Soleinkar (since
deceased through his LR's)
9.a. Shri Datta Guno Solienkar,

9.b. Smt. Datta Solienkar,
Both are Indian Nationals, Resident
of village Soliem, House No. 248,
Honda, Sattari, Goa.
(Names and addresses of other heirs
are not known)

10. Shri Sawlo Madhu Solienkar (since
deceased through his LR's)
10.a. Shri Datta Sawlo Solienkar,

10.b. Smt. Datta Solienkar,

10.c. Shri Vasudev Solienkar,

10.d. Smt. Vasudev Solienkar,
(Names and addresses of other
defendants are not known)

10.e. Shri Sadanand Solienkar,

10.f. Smt. Sadananad Solienkar,
All resident of House No. 242,
Soliem, Honda, Sattari, Goa.

10.g. Smt. Kesari Prabhakar Gaude,

10.h. Shri Prabhakar Gaude,
Both resident of House No. 350,
Kharibhatt, Banastari, Goa.

10.i. Smt. Milan Mahadev Kaulekar,

10.j. Shri Mahadev Kaulekar, of major age,
Both r/o Karapur, Kottiwada,
Bicholim, Goa.

11. Shri Dulo Hari Solienkar (since deceased through his LR's)

11.a. Shri Vithal Dulo Solienkar

11.b. Smt. Vithal Solienkar,
Both are Indian Nationals, Resident
of village Soliem, House No. 232,
Honda, Sattari, Goa.

(Names and addresses of other
defendants are not known)

12. Shri Bhiku Deu Solienkar (since deceased through LR's)

12.a. Shri Bholu B. Solienkar (since deceased represented through LR's)

12.b. Smt. Bholu Solienkar, (natural guardian for respondent no. 12.c., 12.d. and 12.e,

12.c. Ms. Dikshita Bholu Gawade,
daughter of the deceased respondent
Shri Bholu B. Solienkar, a minor aged
14 years,

12.d. Master Pratik Bholu Gawade,
son of the deceased Shri Bholu B.
Solienkar, a minor aged 11 years,

12.e. Master Sudesh Bholu Gawade,
son of the deceased respondent Shri
Bholu B. Solienkar, a minor aged 5
years,

Indian National, Residents of village
Soliem, House No. 234, Honda,
Sattari, Goa.

(Names and addresses of heirs are not known)

13. Shri Krishna Hari Solienkar (since deceased through his LR's)

13.a. Shri Gokoldas Krishna Solienkar

13.b. Smt. Gokuldas Solienkar,
Both are Indian Nationals, Resident
of village Soliem, House No. 265,
Honda, Sattari, Goa.

13.c. Shri Rama Solienkar,

13.d. Smt. Rama Solienkar,
Both resident of House No. 265/1 of
village Soliem, Honda, Sattari, Goa.
(Names and addresses of other heirs
are not known)

14. Shri Kusta Hari Solienkar (since deceased through his LR's)

14.a. Shri Hari Kusta Solienkar,

14.b. Smt. Hari Solienkar,
Both are Indian Nationals, Residents
of village Soliem, House No. 263/1,
Honda, Sattari, Goa.
(Names and addresses of other heirs
are not known)

15. Shri Anu Saju Solienkar (since deceased through his LR's)

15.a. Shri Pandurang Solienkar,

15.b. Smt. Pandurang Solienkar,
Both resident of Gaonkarwada, House
No. 30-B-1, Honda, Sattari, Goa.
(Names and addresses of other heirs
are not known)

16. Shri Sagun Narayan Solienkar (since deceased through his LR's)
 - 16.a. Smt. Manku Sagun Solienkar, Indian National, Resident of House No. 260, village Soliem, Honda, Sattari, Goa.
(Names and addresses of other heirs are not known)
17. Shri Babi Ganesh Solienkar (since deceased through his LR's)
 - 17.a. Smt. Shantu Babi Solienkar,
 - 17.b. Shri Anil Babi Solienkar,
 - 17.c. Smt. Anil Solienkar,
 - 17.d. Shri Ratnakar Babi Solienkar,
 - 17.e. Smt. Ratnakar Solienkar,
All are Indian Nationals, Resident of village Soliem, House No. 257, Honda, Sattari, Goa.
(Names and addresses of other heirs are not known)
18. Shri Antu Ganesh Solienkar (since deceased through his LR's)
 - 18.a. Shri Ramdas Antu Solienkar,
 - 18.b. Smt. Ramdas Solienkar,
Both are resident of House No. 30-D, Gaonkarwada, Honda, Sattari, Goa, House No. not known.
19. Shri Tima Narayan Solienkar (since deceased through his LR's)
 - 19.a. Shri Lavu Tima Solienkar,
 - 19.b. Smt. Lavu Tima Solienkar
Both are residents of House No. 263 of village Soliem, Honda, Sattari, Goa.

(Names and addresses of other heirs are not known)

20. M/s Chowgule and Company Ltd.
(Through its Managing Director),
Harbour, Marmagao, Goa.
21. M/s Chowgule and Company Ltd.
(Through its Mines Manager), Pale,
Bicholim, Goa.
22. M/s Sesa Goa Ltd. (Through its
Managing Director), Sesa Ghor,
Panjim, Goa.
23. M/s Sesa Goa Ltd. (Through its Mines
Manager), Sesa Ghor, Panjim Goa. Respondents

Mr. Jayant Mulgaonkar, Advocate for the Petitioners.

Mr. Purushottam R. Karpe, Advocate for Respondent Nos. 1 to 19.

Mr. S.D. Lotlikar, Senior Advocate with Mr. Prasheen Lotlikar, Advocate for Respondent Nos. 20 and 21.

Mr. R.G. Ramani, Advocate for Respondent Nos. 22 and 23.

CORAM:- S.B. SHUKRE, J.

DATE:- 19th JANUARY, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. This petition challenges the legality and correctness of the order dated 08.08.2014 passed by the learned Senior Civil Judge thereby rejecting the application of the petitioners filed under Order 1 Rule 8 of C.P.C. seeking leave of the Court to file the suit in representative capacity.

3. Learned Counsel for the petitioners submits that the learned Civil Judge has completely ignored the well settled principle of law while dealing with the application filed under Order 1 Rule 8 of C.P.C. He submits that while considering the essential requirement of the provisions of law of community of interest, the Court must satisfy itself that community of interest has been sufficiently shown. He further submits that it is not necessary that the lis in the suit must involve public interest. In support of his argument, he has relied upon the case of **The Chairman, Tamil Nadu Housing Board, Vs. T.N. Ganapathy**, AIR 1990 SC 642.

4. Learned Senior Counsel for the respondent nos. 20 and 21 submits that basically, this is a suit involving private interest and what has been sought to be raised as a grievance is

the alleged wrong entries made in the record of right in respect of the property involved in the suit. He submits that it is not known whether some of the plaintiffs have really any common interest or some of the defendants too, have such common interest or not. Therefore, the impugned order has been rightly passed.

5. Learned Counsel for respondent nos. 1 to 19 and respondent nos. 22 and 23 have submitted the same argument as the argument canvassed by the learned Senior Counsel on behalf of respondent nos. 20 and 21.

6. The provision of Order 1 Rule 8 of C.P.C. indicates that the essential condition for bringing the suit in the representative capacity is that numerous persons must have same interest or community of interest and if, this condition is not satisfied, no leave for filing the suit in representative capacity can be granted. In the case of **T.N. Ganapathy** (supra), the Hon'ble Apex Court has observed in paragraph 7 thus:

"The condition necessary for application of the provisions is that the persons on whose behalf

the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievances which they seek to get redressed. In Kodia Goundar and Another Vs. Velandi Goundar, ILR (1955) Mad 335: (AIR 1955 Mad 281), a Full Bench of the Madras High Court observed that on the plain language of Order 1, Rule 8, the principal requirement to bring a suit within that Rule is the sameness of interest of the numerous person on whose behalf or for whose benefit the suit is instituted. The Court, while considering whether leave under the Rule should be granted or not, should examine whether there is sufficient community of interest to justify the adoption of the procedure provided under the Rule. The object for which this provision is enacted is really to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will subserve the object for its enactment. There are no words in the Rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction, as the present one."

7. It is clear from these observations that although, there are no set principles by which the application of this provision of law can be limited in its scope, the Court has to essentially examine the factor of too many persons having community of interest in the matter.

8. It is also clear that involvement of interest of the public at large as found by the learned Senior Civil Judge is not the condition precedent for application of the said provision. The principle requirement is the sameness of interest on which basis the suit is instituted. The learned Civil Judge was mistaken when she held that the plaintiffs or the petitioners who have filed this suit have not shown any involvement of the public at large. But, there are other grounds as well on which the learned Civil Judge has rejected the application. Upon consideration of all the averments, the learned Civil Judge has rightly found that the sameness of interest has not been sufficiently demonstrated by the petitioners or the plaintiffs. This can be seen from the averments in the plaint as well as the grounds stated in the application. The petitioners have submitted that apart from the petitioners, who are aggrieved by

the wrong entries of the record of right, there could be many other persons who could have been in a similar situation as them. The petitioners are not denying that there can be many other persons having the same interest as they. It is here that one has to say that the essential ingredient of community of interest is lacking in the plaint, as there is uncertainty about sameness of interest and also number of persons having same interest. Therefore, the impugned order cannot be seen as perverse or arbitrary. There is no substance in the petition. The petition deserves to be dismissed.

9. The Writ Petition is dismissed. Rule is discharged.
No costs.

S. B. SHUKRE, J.

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