

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 946 OF 2016

SURYA MAHADEV SHIRODKAR (DECEASED)
THR. LRS.,

... Petitioner

Versus

COMMUNIDADE OF SHIRODA THR. ITS
ATTORNEY SHRI. VENKATESH KESHAV
POROBO SAWKAR AND 2 ORS.,

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioners.

Coram:- F. M. REIS, J.

Date:- 2nd December, 2016

ORAL ORDER :

Heard Mr. A. D. Bhobe, learned counsel appearing for the petitioners.

2. The challenge in the above petition is to the order passed by the learned Civil Judge Senior Division, at Ponda dated 19.01.2016 and the order passed by the Appellate Court dated 20.08.2016 whereby the appeal preferred by the petitioners came to be rejected.

3. Mr. Bhobe, learned counsel appearing for the petitioners has pointed out that the respondents have filed a suit for declaration against the father of the petitioners. Upon the death of the father of the petitioners, Marutiraya Temple Trust filed an application to bring

themselves on record claiming to be the legal heirs of the deceased father of the petitioners. It is further pointed out that as there was dispute as to whether such Trust is the legal representative of the deceased father of the petitioners, the Court directed that an inquiry be conducted as to whether such Trust is the legal representative of the deceased father. The learned counsel further pointed out that the petitioners independently also filed an application to bring themselves on record as the legal heirs along with an application for condonation of delay. It is further submitted that by an order dated 19.09.2013, the petitioners were ordered to be brought on record. It is further pointed out that thereafter the respondents filed an application to recall the said order on the ground that the learned Judge has failed to consider that there was already an inquiry ordered to consider as to who can be brought on record as the legal representative. It is further pointed out that the learned Judge by the said order dated 19.01.2016 allowed the review petition on the ground that the earlier order directing to hold an inquiry was not brought to the notice of the learned Judge while passing such order. The learned counsel further pointed out that this exercise is not permissible on the basis that the records were not brought to the notice of the Court by itself cannot be an error apparent on the face of record as according to him this aspect has been clearly challenged in the reply filed by the respondents to the application filed by the petitioners. The learned counsel further pointed out that the learned Judge has erroneously reviewed the order as according to him on the

garb of the review petition, the learned Judge has set aside the order bringing the petitioners on record. The learned counsel has thereafter pointed out that the learned Lower Appellate Court has erroneously dismissed the appeal of the petitioners and as such, grave injustice would occasion to the petitioners if the impugned order passed in the review petition is allowed to stand.

4. I have considered the submissions of the learned counsel and with the assistance of the learned counsel, I have also gone through the records. On plain reading of the order passed by the learned Judge while condoning the delay and bringing the petitioners on record, it cannot be disputed that the learned Judge did not consider that an inquiry was already pending in connection with the claim of the trust to be brought on record as the legal heirs. In such circumstances, the view taken by the learned Judge while recalling such order cannot be faulted. The learned Lower Appellate Court has also found that there is no infirmity committed by the learned Judge while recalling the order.

5. Mr. Bhobe, learned counsel however points out that grave injustice would occasion to the petitioners as the petitioners are the legal descendants of the deceased father and the petitioners would not be able to put up their claim in such inquiry. On perusal of the orders passed by the learned Judge, I find that liberty has been given to the petitioners to participate in such inquiry. In any event, considering

that the petitioners are claiming to be the legal heirs of the deceased father and an inquiry with that regard is under consideration of the learned Judge. As such, I find that there is no bar for the petitioners to be permitted to participate in the inquiry for the adjudication on the aspect as to who is the legal representative of the deceased father. The petitioners may participate in the inquiry and be made parties to that effect.

6. Subject to the above, the petition stands rejected.

F. M. REIS, J.

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