

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.196 OF 2016**

- 1 Shri Caetano Miguel Dias
s/o. Francisco Dias, aged 65
years, occupation retired
married and his wife.
- 2 Smt. Joaquina Dias
w/o. Caintano Minguel Dias,
d/o. Antonio Luis Dias, aged 63
years, both r/o. H.No.1071,
H.No.3/10/1, Xeller, Canacona-
Goa.

.... Petitioners

V/s

- 1 Shri Panga Govind Dessai
s/o. late Govind Desai,
aged about 75 years, occupation
retired Govt. servant.
- 2 Shri Abhay Panga Desai,
s/o. late Govind Desai,
aged about 40 years,
occupation service, both r/o.
Sheller, Canacona, Goa.
- 3 Smt. Sulbhavati Purso Naik
Desai,
W/o. late Purso Naik Desai
d/o. Saji Sharma Sawant Desai,
aged about 60 years, occupation
housewife.
- 4 Shri Anay Purso Naik Desai,
S/o. late Purso Naik Desai
aged about 32 years, occupation

service, both r/o. Pansulem,
Canacona, Goa.

- 5 Shri Narayan Sheshigiri
Vernekar,
s/o. late Sheshigiri Vernekar,
major in age, goldsmith and his
wife.
- 6 Smt. Laxmi Narayan Vernekar,
Major in age, housewife.
- 7 Shri Rajaram Sheshigiri
Vernekar
s/o. late Sheshigiri P. Vernekar,
major in age, goldsmith and his
wife.
- 8 Smt. Sharada Rajaram Vernekar,
Major in age, housewife.
- 9 Shri Mohan Sheshigiri Vernekar
S/o. late Sheshigiri P. Vernekar,
major in age, businessman and
his wife.
- 10 Smt. Savitri Mohan Vernekar,
Major in age, housewife.
- 11 Shri Raghuvir Sheshigiri
Vernekar
s/o. late Sheshigiri P. Vernekar,
major in age, businessman and
his wife.
- 12 Smt. Ranjana Raghuvir
Vernekar,
major in age, housewife,
All r/o. H.No. not known

Chaudi, Canacona, Goa.

.... Respondents

Shri C.A. Coutinho, Advocate for the Petitioner.

Shri D. Vernekar, Advocate for Respondents No.5 & 6.

CORAM : C.V. BHADANG, J.

DATE : 16th JUNE, 2016

ORAL JUDGMENT :

Rule. The learned Counsel appearing for the contesting respondents no.5 & 6 waives service. Heard finally by consent of the parties.

2. The petitioner had filed an application Exhibit D15 for withdrawal of the Regular Civil Suit No.48/2010 filed by them with permission to file a fresh suit. By the impugned order dated 23/06/2015 the learned Trial Court has partly granted the application saying that the petitioners/plaintiffs can withdraw the suit without liberty to file fresh suit.

3. The only contention on behalf of the petitioners is that when a party seeks to withdraw the suit with liberty to file a fresh suit, the application cannot be partly granted permitting withdrawal and at the same time refusing liberty. Reliance is placed on the decision of this Court in the case of *Devidas Tulsiram Brijwani V/s. The*

Commissioner, Poona Municipal Corporation reported in ***(1973) 0 Supreme (Mah) 21*** and ***Mr. Mario Shaw V/s. Mr. Martin Fernandes & anr.*** reported in ***(1995) 0 Supreme (Mah) 478.***

4. The learned Counsel for the petitioners points out that although the learned Trial Court observes in the impugned order that the petitioners ought to have amended the plaint, an application for amendment filed by the petitioners is already rejected.

5. The learned Counsel for the respondents no.5 & 6 points out that in fact the suit has not been disposed off as withdrawn as the operative part of the order says that; “The plaintiff can withdraw the suit but no liberty is given to the plaintiffs to file a suit”. He, therefore, submits that in fact the learned Trial Court has rejected the application for withdrawal of the suit. The learned Counsel for the respondents no.5 & 6 has placed reliance on the decision of the Hon'ble Apex Court in the case of ***Kandapazha Nadar & Ors. V/s. Chitraganiammal & Ors.*** reported in ***(2007) 7 SCC 65.***

6. I find that the aforesaid judgments were not brought to the notice of the learned Trial Court. In such circumstances, without going into the

aspect whether the impugned order has in fact rejected the application in its entirety or not, it would be appropriate that the learned Trial Court reconsiders the application, afresh and passes appropriate orders in accordance with law.

7. In the result, the petition is partly allowed. The impugned order is hereby set aside. The application for withdrawal filed by the petitioners is remitted back to the learned Trial Court for deciding the same afresh after hearing the parties and in accordance with law. Rival contentions of the parties are left open. Rule is made absolute in the above terms with no order as to costs.

C.V. BHADANG, J.

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