

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NOS. 39 AND 45 OF 2016

CIVIL REVISION APPLICATION NO. 39 OF 2016

1. Mrs. Roza Lydia Saldanha,
aged 90 years, Indian National,
for self and as constituted Attorney for
Petitioner nos. 2 and 3,
r/o Moreen Apartment,
Opposite Gomantak Printing Press,
St. Inez, Panaji, Goa.
Also having office at Saldanha Business Centre.
Ground Floor, Behind GPO,
St. Tome Road, Panaji, Goa.
2. Mr. Teotonio Edwin Jose Saldanha,
Major in age, Indian National, service,
3. Mr. Henry Benedict Saldanha,
Major in age, Indian National, service.
Both r/o 1st Floor, C-47/12(2),
Opposite Gomantak Printing Press,
Kamat Elite Building, St. Inez,
Panaji, Goa, both represented through
Constituted Attorney Petitioner no. 1.
4. Mr. Brian Rosario Saldanha,
Major in age, Indian National, service,
r/o Flat no. s-2, Noor Apartment,
Opposite Gomantak Printing Press,
St. Inez, Panaji, Goa.

..... Petitioners

V e r s u s

1. Mr. Anthony Rebello,
Advocate, major in age,\
Indian National, having office at
1st floor, 'Solar Costa Campos',
Opp. Elite Lodge, Dr. Cunha Gonsalves Road,
Panaji, Goa.
2. Mrs. Charmaine Mary Saldanha,
w/o. Late Anthony William Saldanha,
r/o. Flat no. 2-S-4, staircase No. 2,
Building no. 2, Kamat Classic,
Caranzalem, Tiswadi, Goa.

..... Respondents

A N D

CIVIL REVISION APPLICATION NO. 45 OF 2016

1. Mrs. Roza Lydia Saldanha,
aged 90 years, Indian National,
for self and as constituted Attorney for
Petitioner nos. 2 and 3,
r/o Moreen Apartment,
Opposite Gomantak Printing Press,
St. Inez, Panaji, Goa.
Also having office at Saldanha Business Centre.
Ground Floor, Behind GPO,
St. Tome Road, Panaji, Goa.
2. Mr. Teotonio Edwin Jose Saldanha,
Major in age, Indian National, service,
3. Mr. Henry Benedict Saldanha,
Major in age, Indian National, service.
Both r/o 1st Floor, C-47/12(2),
Opposite Gomantak Printing Press,
Kamat Elite Building, St. Inez,
Panaji, Goa, both represented through
Constituted Attorney Petitioner no. 1.
4. Mr. Brian Rosario Saldanha,
Major in age, Indian National, service,
r/o Flat no. s-2, Noor Apartment,
Opposite Gomantak Printing Press,
St. Inez, Panaji, Goa.

..... Petitioners

V e r s u s

1. Mrs. Shanti Kundaikar,
Major, Indian National,
r/o. H. No. 191, Madant,
Divar, Ilhas – Goa.
2. Mrs. Charmaine Mary Saldanha,
w/o. Late Anthony William Saldanha,
r/o. Flat no. 2-S-4, staircase No. 2,
Building no. 2, Kamat Classic,
Caranzalem, Tiswadi, Goa.

..... Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. John A. Lobo, Advocate for the Petitioners.

Mr. Sudesh Usgaonkar, Advocate for the Respondent no. 1.

Mr. A. D. Bhobe, Advocate for the Respondent no. 2.

Coram :- F. M. REIS, J

Date : 17th November, 2016

ORAL JUDGMENT

Heard Mr. S. S. Kantak, learned Senior Advocate appearing for the Petitioners, Mr. Sudesh Usgaonkar, learned Counsel appearing for the Respondent no. 1 and Mr. A. D. Bhobe, learned Counsel appearing for the Respondent no. 2.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents, waive service.

3. Both the Petitions were taken up together as it was not disputed by the learned Counsel appearing for the respective parties that the issues involved are identical though they flow from two different suits filed by the Respondent no. 1. The challenge in the above Petition is to the dismissal of an application filed by the Petitioners under Order VII Rule 11 read with Order II Rule 2(3) and Order XXIII Rule 1(4) of the Civil Procedure Code.

4. Shri Kantak, learned Senior Advocate appearing for the Petitioners, has strenuously pointed out that the suit filed by the Respondent no. 1 is barred under Order II Rule 2(3) of the Civil Procedure Code and that there is no cause of

action which could entitle the Respondent no. 1 to file a fresh suit without seeking leave in terms of Order XXII. However, during the course of the hearing of the above Petition, it was pointed out to the learned Counsel that all these aspects would have to be more appropriately dealt with only after the Petitioners filed their written statements to the suit filed by the Respondent no. 1 as at that stage, the Court would have the benefit of the defence of the Petitioners to examine all such contentions.

5. In such circumstances, I pass the following Order by consent :

ORDER

(i) The Petitioners in both the petitions to file their written statements to the suit filed by the Respondent no. 1 within 3 weeks from today.

(ii) After examining the pleadings in the suit, the learned Judge shall frame issues which arise in the suit in accordance with law and examine whether the stand taken by the Petitioners to the effect that the suit is barred under Order II Rule 2(3) of the Civil Procedure Code or any other issues can be treated as preliminary issues.

(iii) The learned Judge shall thereafter proceed to decide such issue after hearing the parties in accordance with law.

(iv) The observations and any findings rendered in the impugned Orders dated 27.07.2016 and 23.08.2016 will not in any way influence the learned Judge whilst examining further proceedings in the suit as well as whilst

deciding preliminary issues if at all raised in the suit.

(v) The learned Judge shall consider to expeditiously dispose of the suit in accordance with law.

(vi) Rule is disposed of in the above terms.

F .M. REIS, J.

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