

IN THE HIGH COURT OF BOMBAY AT GOA.**WRIT PETITION NO.1090 OF 2016.**

1. Mr. Blasco Bernardo Barreto,
Major in age, and his wife;
2. Mrs. Amelia Maria Rodrigues
E Barreto, alias Amelia Barreto
Major in age, both r/o. H. No.
73, Mandopa, Navelim,
Salcete, Goa.Petitioners.

Versus

1. Mrs. Brigida Monica
Saluzinha Barretto,
Major in age, and
her husband.
2. Mr. Rui Jose Mariano de
Fatima Godinho,
Major in age, both resident
of H.No.752-A,
Mandopa, Navelim,
Salcete, Goa.
3. Mrs. Esmeralda Perpetia
Gonsalves E Barreto,
major in age.
4. Mrs. Brazinha Dolorosa
Barreto, Major in age.
5. Mr. Ignatius Gomes,
Major in age, all residing
at H.No.36, Mandopa, Navelim,
Salcete, Goa.
6. Mrs.Sacramenta Rodrigues,
Major in age and her husband.

7. Mr. Sebastiao Rodrigues,
Major in age, both resident of
H.No.92, Firgulem Modi,
Navelim, Salcete, Goa.

.....Respondents.

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

Shri A. Clovis Da Costa, Advocate for the respondents.

CORAM : F.M. REIS, J.

DATE : 1st December,2016.

ORAL JUDGMENT

Heard C. A. Coutinho, learned Counsel for the petitioners and Shri A. Clovis Da Costa, learned Counsel for the respondents.

2. Rule.

3. Heard forthwith with the consent of the learned Counsel appearing for the respective parties.

4. The learned Counsel appearing for the respondent waives service.

5. The short point for consideration in the above Writ

Petition is whether the learned Judge has acted in material irregularities affecting its jurisdiction while disposing an application under Order XLI Rule 27 of CPC.

6. Shri Coutinho, learned Counsel appearing for the petitioners states that the impugned order passed is without giving hearing to the petitioners, as according to him, no arguments was advanced in connection with the application under Order XLI Rule 27 of the CPC. The learned Counsel further points out that even in the review application it was pointed out to the learned Judge that such application has to be considered at the time of the final hearing of the appeal on merits. The learned Counsel as such submits that the learned Judge has erroneously exercised jurisdiction while disposing off the application at the threshold.

7. On the other hand, Shri A. Clovis Da Costa, learned Counsel appearing for the respondents submits that the documents are irrelevant for deciding the controversy involved in the matter. The learned Counsel, however points out that application filed under Order XLI Rule 27 of CPC may be re-

examined by the learned Judge while deciding the appeal on merits.

8. Considering the submission of the learned Counsel, it is now well settled that the application under Order XLI Rule 27 of CPC has to be normally examined at the time of final hearing of the appeal on merits.

8. In such circumstances, the learned Judge was not justified to dispose the application under Order XLI Rule 27 of the CPC before such stage in the appeal.

9. In view of the fair stand taken by the learned Counsel appearing for the respondents, I find that the impugned order dated 15.7.2016 passed by the learned Lower Appellate Court dismissing the application under Order XLI Rule 27 CPC deserves to be quashed and set aside and the learned Judge be accordingly directed to decide the application under XLI Rule 27 of CPC afresh at the time of the final hearing of the appeal on merits.

10. In view of the above, I pass the following:-

ORDER

- (i) The impugned order dated 15.7.2016 is quashed and set aside.
- (ii) The learned Judge is directed to decide the application under Order XLI Rule 27 of CPC in the light of the observations made herein above and in accordance with law. All the contentions of the parties are left open.
- (iii) Rule is made absolute in the above terms.

F.M. REIS, J.

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