

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 166 OF 2017**

1. Bonita D'Souza, major of age, married, business, residing at SS Fair Deal Agencies, 31st January Road, Philips Service Centre, Panaji-Goa.
2. Mrs. Milana Miranda, married, major, service;
3. Jose Maria Miranda, major, married, Both residents of Borda, Margao-Goa.
4. Mr. Noel D'Souza, major, service, residing at S.S. Fair Deal Agencies, 31st January Road, near Philip Service Centre, Panaji-Goa.

.... Petitioners

Versus

1. Mrs. Precy Noronha (since deceased), through her heirs:
 - 1a. Libania Nifa Noronha, of major age and her husband,
 - 1b. Mr. Cajetan Assiz D'Souza,
 - 1c. Mr. June Wilhelurina Maria Noronha,
 - 1d. Shri Leslis Barreto,
 - 1e. Shri Joseph Christopher Vivian Noronha, All major in age, residents of Uccassaim, Bardez-Goa.
2. Anand Atchut Raikar,
3. Govind Atchut Raikar,
4. Milind Atchut Raikar,
5. Atchut S. Raikar (since deceased), through legal heir:
 - 5a. Pushpa Atchut Raikar, of major age, All residents of House No. 497, Aradi, Porvorim, Bardez-Goa.

6. Ramdas Nahuesh Raikar, of major age, resident of House No. 497, Aradi, Porvorim, Bardez-Goa.
7. Arcanj Manuel Fernandes, of major age, resident of Aradi, Porvorim, Bardez-Goa. Respondents

Shri Devidas J. Pangam with Shri S.P. Munj, Advocates for the Petitioners.

Shri Shivan Desai, Advocate for the Respondent Nos. 1(b) and 1(d).

CORAM:- C.V. BHADANG, J.

DATE:- 20th November, 2017.

ORAL JUDGMENT:

Rule made returnable forthwith. The learned Counsel, waives service on behalf of the contesting respondent nos. 1(b) and 1(d). Heard finally by consent of parties.

The petitioners are the original plaintiffs. Defendant no. 1(e) died on 14.08.1997, during the pendency of the suit. The suit came to be eventually dismissed, which is challenged by the petitioners in Regular Civil Appeal No. 457/2010, which is pending before the learned Additional District Judge at Mapusa. In the said appeal, an application came to be filed on behalf of the petitioner on 30.09.2015, to allow the petitioners to amend the cause title of the appeal memo, showing respondent nos. 1(a)(i) to 1(a)(vii), 1(b) and 1(d) as the legal

representatives of the deceased respondent no. 1(e) [original defendant no. 1(e)]. It appears that the contesting respondents gave no objection for the same, with a rider that there are some more legal representatives of the respondent no. 1(e). The learned District Judge allowed that application by an order dated 03.11.2015. Subsequently, the contesting respondents filed an application (Exhibit-52) for review of the order dated 03.11.2015, on the ground that the roznama dated 07.01.2008 records that on account of failure to take steps for bringing the legal representatives of respondent nos. 1(c) and 1(e), the appeal stands abated. The learned District Judge by impugned order dated 18.01.2017 has allowed the application thereby recalling the order dated 03.11.2015. The net result is that the application dated 30.09.2015 filed by the petitioners is dismissed. It is this order, which is subject matter of challenge in this petition.

2. I have heard Shri Pangam, the learned Counsel for the petitioners and Shri Desai, the learned Counsel for the respondent nos. 1(b) and 1(d).

3. It is submitted by Shri Pangam, the learned Counsel for the petitioners that some of the defendants, who are legal

representatives of the deceased defendant no. 1(e), were already on record and as such, the suit and for the matter of that, the appeal could not have abated on account of failure to being legal representatives of the deceased defendant on record. The learned Counsel pointed out that the contesting respondents had in fact given no objection and merely on account of some roznama entries, the learned District Judge was in error in reviewing the order.

4. The learned Counsel for the respondent nos. 1(b) and 1(d) has supported the impugned order. It is submitted that inspite of opportunities given, the petitioners did not bring the legal representatives of the deceased respondent nos. 1(c) and 1(e) on record and the abatement was automatic, as recorded in the roznama dated 07.01.2008 and as such, the learned District Judge was justified in recalling the order dated 03.11.2015.

5. I have carefully considered the circumstances and the submissions made.

6. Undisputedly, the defendant no. 1(e) died during the pendency of the suit and an application was made in the appeal to show some of the respondents as legal representatives of the

deceased defendant no. 1(e). The order does not show that the aspect of presence of some of the legal representatives being already on record has been considered. In view of the fact that the appeal is still pending, I find it appropriate to remit the application to the learned District Judge for deciding it afresh, after hearing the parties in accordance with law. The learned District Judge shall consider whether, in view of the presence of some of the legal representatives on record, the appeal can be said to have abated.

7. In the result, the following order is passed:-

ORDER

(a) The petition is partly allowed.

(b) The application (Exhibit No. D/49) is restored to the file of the learned District Judge.

(c) It will be open to the contesting respondents to file an additional reply to the application, if any.

(d) The learned District Judge shall decide the application afresh, after hearing the parties in accordance with law.

(e) Parties to appear before the learned District Judge on 30.11.2017 at 10:00 a.m.

(f) Rule is made absolute in the aforesaid terms,
with no order as to costs.

C. V. BHADANG, J.

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