

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 186 OF 2012

MR. TEOFILO FERNANDES AND 6 ORS., ... Petitioners
Versus
MR. JOHN DENIS LUIS MASCARENHAS ... Respondents
AND 3 ORS.,

Mr. S. S. Kantak, Senior Advocate with Advocate A. Kamat for
the Petitioner.
Mr. J. J. Mulgaonkar, Advocate for the Respondents.

Coram:- M. S. SONAK, J.

Date:- 28th April, 2017

P.C.:

Heard Mr. S. S. Kantak, the learned Senior Counsel for the
Petitioners and Mr. Mulgaonkar, the learned counsel for the
respondent nos.3 and 4.

2. The petitioner challenges the order dated 23/2/2012, made by
the learned Civil Judge Junior Division at Mapusa disallowing
their impleadment in Regular Civil Suit No.149/99/A.

3. Mr. Kantak, the learned Senior Counsel submits that the suit
was instituted by the respondent nos.1 and 2 seeking injunction
against respondent nos. 3 and 4 in the said suit. The respondent
nos.3 and 4 raised a counter claim seeking partition. Mr. Kantak
submits that the partition is applied for in respect of certain

properties which belong to the petitioner or certain properties of which the petitioner is the co owner.

4. In such circumstances, Mr. Kantak submits that the impleadment ought to have been allowed. He submits that the reasons stated by the learned trial judge for disallowing impleadment are neither legal nor proper.

5. Mr. Mulgaonkar, the learned counsel for the respondents nos. 3 and 4 submits that Regular Civil suit no.149/99/A has since been dismissed but the counter claim raised by the respondent nos.3 and 4 has been decreed. Said decree was appealed in Regular Civil Appeal No.113/2013 which has been dismissed by the appeal court by judgment and decree dated 30/3/2016. The appellant in the said Regular Civil Appeal is stated to have instituted a second appeal which is pending. He submits that this petition has become infructuous and in any case, there was no legal infirmity in the impugned order. He submits that petitioners have no rights and in any case, it is for the petitioners to take out independent proceedings for enforcement of their rights, if any.

6. At this stage, it will not be appropriate to continue with the present petition, which has virtually been rendered infructuous. This is notwithstanding the amendment carried out by the petitioner to the petition seeking for setting aside the decree in

the counter claim. It is settled position in law that the judgement and decrees will be bind the parties to the proceedings inter se. In this case, the petitioners were not allowed to be impleaded in the proceedings. In such circumstances, in case the petitioners have any independent rights as claimed by them and if the petitioners take out appropriate proceedings before the appropriate forum to vindicate such alleged rights there is no question of the decrees in the counter claim affecting their alleged rights.

7. With this clarification this petition can be disposed off and is being disposed off.

8. It is made clear that this court has not adverted to the merits of the respective claims of the parties, and therefore, the issue in this regard at least between the petitioners and the respondents are left open for determination by the appropriate authority at the appropriate stage.

9. The petition is disposed off in the aforesaid terms. There shall be no order as to costs.

M. S. SONAK, J.

ap/-