

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 262 OF 2017

MR. NEWTON BOCARRO., ... Petitioner
Versus
MR. LUDWICK MANOEL CONCEICAO
PEREIRA AND ANR., ... Respondents

Shri Myron D'souza, Advocate for the petitioner.
Shri Joaquim Godinho, Advocate for the respondent nos.1 & 2.

Coram:- M. S. SONAK, J.

Date:- 10th April, 2017

ORAL ORDER

The challenge in this petition is to the orders dated 3.9.2016 and 3.1.2017 made by the Civil Judge, Junior Division, Panaji. The petitioner is the original plaintiff no.1 in Regular Civil Suit No.35/2009/C instituted against the defendants(respondents herein) under Section 6 of the Specific Relief Act, 1963.

2. Consequent upon the demise of plaintiff no.1 Pasquina, the petitioner filed application for leave to bring on record the legal representatives of the said Pasquina. The respondent has taken out an application under Order XXII Rule 5 of the CPC seeking an inquiry as to whether there were any further surviving legal heirs of the deceased Pasquina. It is on this application that the learned Trial Judge made her order dated 3.9.2016, taking view that there is no necessity in the present case to determine whether there are any further legal heirs. Nevertheless, the directions

were issued to bring on record the said Mrs. Clara Bocarro.

3. Mrs. Clara Bocarro, is admittedly the widow of late Joao Bocarro, who expired on 6.2.2008. Late Joao Bocarro was admittedly the son of the plaintiff no.1 Pasquina. However, it is the case of the petitioner that since Joao Bocarro had died on 6.2.2008 and Pasquina died on 12.2.2016, there was no question of any devolution of rights in respect of the suit property upon late Joao Bocarro.

4. Consequently, there was no question of widow of Joao Bocarro claiming any right on basis of devolution. On this precise ground, petitioner took out review petition on 27.9.2016 (Exh. 44)

5. The learned Trial Judge by order dated 3.1.2017 has dismissed the review petition by observing that late Joao Bocarro had share in the suit property, which further on now devolves upon his widow Clara Bocarro.

6. Shri M. D'Souza, learned Counsel appearing for the petitioner submits that there is serious fault in the reasoning adopted by the learned Trial Judge. He submits that as per the law of inheritance, since, Clara's husband Joao expired much prior to Pasquina, there was no question of any right or title devolving upon Joao, much less, upon Clara. In these circumstances, Shri D'Souza, submits that there was no question of permitting Clara to represent the estate of Pasquina.

7. As noted earlier, suit instituted by the plaintiff is under

Section 6 of the Specific Relief Act, 1963, in such a suit, the issue of title per se, is to a great extent, irrelevant. This is basically a suit based upon the prior possession. In such a suit there is really no occasion for any decision upon the alleged rights or entitlements of the plaintiffs inter se. The issue as to whether the Clara had a share in the property of late Pasquina or not would really not be an issue which is required to be decided at this stage and in this suit. Such an issue is really an independent matter which has to be agitated by the parties independently before the appropriate forum. In fact, the learned Trial Judge in her order dated 3.9.2016 has rightly observed that inquiry as contemplated under Order XXII Rule 5 of CPC was really not necessary.

8. In the order dated 3.1.2017, however, the learned Trial Judge has gone into the issue as to whether rights in the suit property have devolved upon Clara or not. Such determination was unnecessary in the facts and circumstances of the present case.

9. Accordingly, it is clarified that notwithstanding certain observations in the impugned order, the issue of Clara having right to the suit property or not is left open. Such an issue need not be decided in the present suit. The parties are at liberty to take out appropriate proceedings before the appropriate forum in order to obtain determination of the issue, if they, so desire.

10. Notwithstanding the aforesaid, there is no necessity to interfere with the directions issued by the learned Trial Judge that Clara Bocarro be brought on record. Since, there are

disputes between the petitioner and Clara, it will not be appropriate to direct impleadment of Clara as co-plaintiff in the suit. However interest of justice will be met if Clara is impleaded as the defendant in the suit. However, once again, it is made clear that inter se dispute between Bocarro need not be gone into in a suit under Section 6 of the Specific Relief Act.

11. The impleadment of Clara as the defendant is also directed because it cannot be said that she is some complete stranger. Such impleadment is necessary in case respondents propose settlement of the dispute with the original defendant. In such a case it is possible that Clara can apply for transposition in case she is not part of the settlement. It is once again made clear that neither the impugned order nor observation in the impugned order are to be construed as determination of rights of the Bocarro inter se in so far as such property is concerned.

12. With the aforesaid observation, this petition is disposed off. Petitioner to implead Clara Bocarro as defendant to the suit on or before 18.4.2017 which is the date schedule for the matter before the trial Court.

13. There shall be no order as to costs.

14. All concerned to act on the authenticated copy of this order.

M. S. SONAK, J.