

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 229 OF 2011**

Shri Shrikant Shhambhu Volvoikar, married,
about 71 years of age, residing at Maula,
Santa Ana, Tiswadi, Goa. Petitioner

Versus

1. Shri Narendra Pandu Chatim, son of
Pandu Chatim, married, major of age,
businessman,
2. Smt. Vandana Narendra Chatim, wife
of respondent no. 1, teacher, both
residing at House No. 196, Badem,
Salvador do Mundo, Bardez, Goa.
3. Shri Narayan Bhikaro Shirodkar,
major of age, residing at Maula, Santa
Ana, Tiswadi, Goa. Respondents

Shri Vilas P. Thali, Advocate for the Petitioner.

Ms. Maria Correia, Advocate holding for Shri Nigel Costa Frias,
Advocate for the Respondent Nos. 1 and 2.

CORAM:- C.V. BHADANG, J.

DATE:- 4th SEPTEMBER, 2017.

ORAL JUDGMENT:

The petitioner (defendant no. 1), is challenging the order dated 20.01.2011, passed by the learned Trial Court, by which an application filed by the respondent nos. 1 and 2 (the original plaintiffs) for impleadment of wife of the petitioner, as a

co-defendant, has been allowed. The suit filed by the respondent nos. 1 and 2, is for declaration that the petitioner has no right, title or interest in the suit property. It is undisputed that the petitioner and his wife are parties to the sale deed, under which the petitioner is claiming to be the owner. In that view of the matter, the learned Trial Court found that the wife of the petitioner is a necessary party to the suit and directed her impleadment as party-defendant. Not only that, the learned Trial Court also found that it was the petitioner, who had earlier raised a defence that his wife is a necessary party to the suit.

2. I have heard Shri Thali, the learned Counsel for the petitioner and Ms. Correia, the learned Counsel for the respondent nos. 1 and 2 and perused record.

3. The only contention raised on behalf of the petitioner is that the application was belated. It is contented that the defence, that the suit was bad for non joinder of a necessary party, was raised in the year 1996 and the application for impleadment was filed after more than ten years. The learned Trial Court has found that this is not the ground for disallowing the application and the defendants will have to be

compensated. The learned Trial Court has thus imposed costs of Rs.1000/-, while allowing the amendment.

4. At the outset, it is necessary to note that the petitioner in his capacity as a defendant, cannot be said to be aggrieved by a direction to add another person as a co-defendant, only because incidentally, the person who is directed to be added happens to be his wife. It is the person, who is directed to be joined, who can, in a given case, be aggrieved and can challenge such an order. The wife of the petitioner has not approached this Court. For this reason alone, the petition cannot be entertained. Even on merits, no case for interference is made out. As noticed earlier, the wife of the petitioner is also a party to the sale deed, under which the petitioner is claiming to be the owner of the suit property. It was the petitioner, who had raised the defence that his wife was a necessary party to the suit. Insofar as the question of delay is concerned, the Trial Court has already imposed costs. The proposed defendant, who is directed to be impleaded can always raise all such defences, as may be available in law in the suit.

The petition is dismissed, with no order as to costs.

C. V. BHADANG, J.