

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.507 of 2017**

1. Shri Chandrakant Bapur Malik,
Son of late Shri Bapu Chandro Malik,
Major in age,
r/o H. No.342/2, Hassapur,
Pernem - Goa
2. Shri Yeshwant Atmaram Malik,
Son of late Shri Atmaram Malik,
Major in age,
Residing at flat No.335, Hassapur,
Pernem- Goa.
3. Shri Sajo Atmaram Malik,
Son of late Shri Atmaram Malik,
Major in age,
Residing at flat No.336,
Hassapur, Pernem - Goa
4. Shri Shankar Atmaram Malik,
Son of late Shri Atmaram Malik,
Major in age,
Residing at H. No.335, Hassapur,
Pernem- Goa.
5. Shri Sahadev Atmaram Malik,
Son of late Shri Atmaram Malik,
Major of age,
Residing at H. No.335, Hassapur,
Pernem - Goa
6. Shri Vinayak @ Vinu Atmarama Malik,
Son of late Shri Atmaram Malik,
Major in age,
Residing at H. No.335, Hassapur,
Pernem- Goa.
7. Shri Sambhaji Atmaram Malik,
Son of late Shri Atmaram Malik,
Major in age,
Residing at H. No.335, Hassapur,
Pernem- Goa.
8. Shri Shantaram Anant Malik,
Son of late Shri Anant Atmaram Malik,
Major in age,

r/o H. No.335, Hassapur,
Pernem- Goa.

9. Shri Keshav Narayan Malik,
Son of late Shri Narayan Malik,
Major in age
r/o H. No.460, Hassapur,
Pernem- Goa.
10. Shri Subhash Narayan Malik,
Son of late Shri Narayan Malik,
Major in age
r/o H. No.460, Hassapur,
Pernem- Goa.
11. Bharat Narayan Malik,
Son of late Shri Narayan Malik,
Major in age,
r/o H. No.460, Hassapur,
Pernem- Goa.
12. Shri Shatrughan Narayan Malik
Son of late Shri Narayan Malik,
Major in age
r/o H. No.460, Hassapur,
Pernem- Goa.
(since deceased)
- 12(a) Kishor S. Malik
s/o Late Shatrughan Naraya Malik
Major of age
Resident of H. No.460,
Hassapur, Pernem, Goa
13. Shri Namdev Shivaram Malik,
Son of late Shri Shivaram Malik,
Major in age
r/o H. No.366, Hassapur,
Pernem- Goa.
14. Shri Nagesh Mahadev Malik,
Son of late Shri Mahadev Pundalik Malik,
Major in age
r/o Hassapur, Pernem- Goa.
15. Shri Jagannath Bapu Malik,
Son of late Shri Bapu Chandro Malik,
Major in age
r/o H. No.342/3, Hassapur,

Pernem- Goa.

16. Shri Satu Fatu Malik,
Son of late Shri Fatu Devu Malik,
Major in age
r/o H. No.332, Hassapur,
Pernem- Goa.
17. Shri Fatu Devu Malik,
Son of late Shri Devu Malik,
Major in age
r/o H. No.332, Hassapur,
Pernem- Goa.
18. Shri Santosh Sajo Malik,
Son of late Shri Sajo Atmaram Malik,
Major in age
r/o H. No.336, Hassapur,
Pernem- Goa. .. Petitioners

Vs.

1. Shri Bhiva Ladu Malik,
Son of late Shri Ladu Bhiva Malik,
Major in age,
r/o F-6, Mansukh Apartment,
B. B. Borkar Road,
Porvorim, Bardez- Goa.
2. Shri Vijay Ladu Malik,
Son of late Shri Ladu Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
3. Shri Suhas Ramkrishna Malik,
Son of late Shri Ramkrishna Rauji Malik,
Major in age,
r/o H.no.296,
Hassapur, Pernem- Goa
4. Shri Dhananjay Ramkrishna Malik,
Son of late Shri Ramkrishna Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
5. Shri Gangadhar Ramkrishna Malik,

Son of late Shri Ramkrishna Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.

6. Shri Ravaji Ramkrishna Malik,
Son of late Shri Ramkrishna Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
7. Shri Sagun Ravji Malik (s.d.)
8. Shri Janardhan Ravji Malik,
Son of late Shri Ravji Malik,
Major in age,
r/o H.no. not known,
Hassapur, Pernem- Goa.
9. Shri Dinesh Shankar Malik,
Son of Shri Shankar Laxman Malik,
Major in age
r/o H. No. 293-1, Hassapur,
Pernem- Goa.
10. Shri Govind Shankar Malik
Son of Shri Shankar Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
11. Shri Rupesh Shankar Malik,
Son of Shri Shankar Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
12. Shri Shankar Laxman Malik,
Son of late Shri Laxman Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
13. Shri Pandurang Laxman Malik,
Son of late Shri Laxman Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.

14. Shri Prakash Rama Malik,
Son of late Shri Rama Bablo Malik,
Major in age,
r/o H. No.295,
Hassapur, Pernem- Goa.
15. Shri Ladu Ganesh Malik,
Son of late Shri Ganesh Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
16. Shri Sanjay Eknath Malik,
Son of Shri Eknath Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
17. Shri Shanu Zilu Malik,
(since deceased) through his LR's

(i) Shri Sudhir Shanu Malik
s/o. late Shri Shanu Zilu Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.

(ii) Shri Deepak Shanu Malik,
s/o. late Shri Shanu Zilu Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
18. Shri Pralhad Bhadu Malik,
Son of Shri Bhadu Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
19. Shri Chandrakant Dattaram Malik,
Son of Shri Dattaram Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
20. Shri Ladu Madhukar Malik,
Son of Shri Madhukar Malik,
Major in age
r/o H. No. not known, Hassapur,

Pernem- Goa.

21. Shri Manohar Saba Malik,
Son of Shri Saba Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
 22. Shri Santosh Mahadev Malik,
Son of late Shri Mahadev Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
 23. Shri Madhukar Krishna Malik,
Son of late Shri Krishna Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
 24. Shri Tatoba Appa Malik,
Son of late Shri Appa Malik,
Major in age
r/o H. No. not known, Hassapur,
Pernem- Goa.
- .. Respondents.

Mr. A. Bhobe and Ms. S. Bhobe, Advocate for the petitioners.

Mr. R. G. Ramani, Advocate for the respondent nos.1 to 6, 8 to 14, 17(i) and 17(ii), 18, 19 and 21.

CORAM :- C. V. BHADANG, J.

DATE:- 14th August, 2017

ORAL JUDGMENT :

On 23/06/2017, a notice for final disposal was issued in this case. Accordingly, the petition is being disposed of finally.

2. The petitioners are challenging the part of the order dated 11/04/2017, passed by the Trial Court on the Application

Exh.71, which was an application under Order XIV, Rule 5 of the Code of Civil Procedure (Code, for short) for deleting the issue no.1 and for reframing / framing of some additional issues. By the impugned order, the Trial Court has refused to delete issue no.1. Feeling aggrieved, the petitioners are before this Court.

3. The petitioners have filed a suit for permanent injunction. The case made out by the petitioners is that Goddess Sateri is the family deity (*Kuldevata*) of the plaintiffs and the defendant nos.22 to 24 and not of rest of the defendants i.e. defendant nos.1 to 21. The petitioners claimed that they are Mahajans of the said temple of Shree Devi Sateri of Hassapur. The petitioners further claimed that there were originally two families namely of late Shri Pandu Ramu Malik and late Shri Bhiva alias Jiva alias Jiv Rama Malik, who had constructed the said temple of Goddess Shree Devi Sateri. Thus, according to the petitioners, the said two family groups are only the Mahajans of said temple.

4. The respondent nos.1, 3, 4, 5, 6, 13, 14, 18 and 19 have filed Written Statement and opposed the claim of the petitioners. The respondents claimed that the Goddess Sateri is the family deity (*Kuldevata*) of all the Maliks' of village Hassapur and is also a *Gramdevata* of village Hassapur. It was further contended that the temple of Goddess Sateri was constructed by the

ancestors of Maliks' of Hassapur in time immemorial and the records of the founders and date of the foundation of the temple are not available. In other words, it is the case of the contesting respondents/ defendants that the petitioners/ plaintiffs are not the exclusive Mahajans of the temple, to the exclusion of the defendant nos.1 to 21.

5. The learned Trial Court framed the following issues :

“1. Whether the plaintiffs prove that they are the mahajans of the temple ?

2. Whether the plaintiffs prove that defendants have no right over the said temple ?

3. Whether the plaintiffs prove that defendants are interfering with the daily services, rites, rituals and other ceremonies of the temple ?

4. Whether the defendants prove that the suit is not maintainable u/s 9 of the Code of Civil Procedure ?

5. What relief ? What order ?”

6. The petitioners filed an application Exh.71 for deletion of issue no.1 and for framing of some additional issues. Presently, we are not concerned with the claim for framing of additional issues, which has been allowed by the Trial Court. The principal question is whether the Trial Court was justified in refusing to delete issue no.1.

7. I have heard Shri Bhobe, the learned Counsel for the petitioners and Shri Ramani, the learned Counsel for the respondent nos.1 to 6, 8 to 14, 17(i) and 17(ii), 18, 19 and 21. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned order passed.

8. During the course of arguments at bar, it was not disputed that the case of the contesting defendants/ respondents is that the petitioners are not the only persons, who are Mahajans of the temple. It is the case of the contesting respondents that Sateri devi is the *Kuldevata/ Gramdevata* of village Sateri and of all Maliks' of that village. A perusal of reply filed by the contesting respondents to the application for deletion of issue no.1, would make it clear that according to the contesting respondents, the plaintiffs and the defendants are presumed to be Mahajans as they are not enrolled under the list of Mahajans under the Devastan Regulations and compromisso framed thereunder. In para 4 of the written arguments, the contesting respondents have stated thus :

“ 4. It is the Defendants who have applied for the enrollment of the Defendants and the Plaintiffs in the list of Mahajans before the competent authority and the Plaintiffs have refused to co-operate for enrolment of Mahajans. It is laid down under the mazania regulation that only those who are enrolled

as Mahajans are entitled to exercise the rights of Mahajans.”

9. The Court is required to frame issues on the basis of the rival pleadings, namely the contents of the plaint and the Written Statement. If the Written Statement filed by the contesting defendants is considered along with the case made out in para 4 of the written arguments, it is apparent that the case of the contesting respondents is only about the denial of the petitioners being the exclusive Mahajans of the temple, to the exclusion of others.

10. The learned Trial Court, in para 7 of the impugned order, has found that the respondents have denied that the plaintiffs are Mahajans. I am afraid, the observations in para 7, may not be correct, if we carefully go through the Written Statement as a whole. It is trite that as per Order VIII, Rule 3 of the Code, denial of the plaintiffs' case has to be specific. The contesting defendants/ respondents have not denied the fact that the petitioners are the Mahajans. The denial is only about their claim that they are Mahajans to the exclusion of others. In such circumstances, it would be appropriate, if the issue no.1 is modified to read as under :

“Whether the plaintiffs prove that they are exclusive Mahajans of the temple to the exclusion

of the defendant nos.1 to 21 and others ?”

11. Issue shall stand accordingly modified.

12. The petition is disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA