

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 515 OF 2017**

Shri. M. C. Chachappan,
Son of Shri. C. M. Chacko,
Aged 59 years,
Resident of Ground Floor,
Kaithra Mansion, Agalli,
Fatorda, Goa.

.... Petitioner/Original Defendant.

Versus

Shri K. K. John,
Prop. M/s. K. K. John,
Resident of Kilayanal House,
P.O. Mekkadampu Muvathipuza,
Ernakulam District
Kerala India

.... Respondent/Original Plaintiff

Mr. Agha Iftikhar, Advocate for the petitioner.
Mr. R. G. Ramani, Advocate for the Respondent.

Coram :- C. V. BHADANG, J
Date : 08th November, 2017.

ORAL JUDGMENT:

Rule, made returnable forthwith. Shri Ramani, the learned Counsel for the Respondent waives service. Heard finally by consent of parties.

2. There was a Consent Decree passed which was sought to be executed by the Petitioner in Execution Application no. 230 of 2015. It appears that the Petitioner sought withdrawal of the Execution Application which was opposed on behalf of the Respondent. The

Executing Court, instead of deciding on the withdrawal has observed that the Decree is a nullity.

3. Learned Counsel for the Petitioner submits that the Executing Court could not have gone behind the Decree in holding that the Decree was a nullity as being passed by the Court without jurisdiction. He further submits that the matter be remitted back to the Executing Court.

4. Shri R. Ramani, the learned Counsel for the Respondent states that merely because the State was deleted from the array of the defendants, the Consent Decree cannot become one without jurisdiction.

5. On hearing the learned Counsel for the parties, I find it appropriate to remand the matter back to the Executing Court. The Executing Court can decide the issue afresh after hearing the parties in accordance with law.

6. In such circumstances, the Petition is partly allowed. The impugned order is hereby set aside. The Execution Application No. 230 of 2015 is restored to the file of the learned District Judge at South Goa, Margao, who shall decide the matter afresh after hearing the parties in accordance with law.

7. Parties to appear before the Executing Court on 04.12.2017.
8. Rule is made partly absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J

msr.