

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 630 OF 2017**

1. Shri Vasant Raghu Kavlekar,
Son of late Shri Raghu Kavlekar,
Major in age, Landlord,
and Agriculturist, (expired)
Amendment carried out as
per order dated 26.10.2015.
 2. Shri Surendra Vassant Kavlekar
(expired)
Son of Shri Vassant Kavlekar,
Major in age, occupation, business
married and his wife,
 - 2a. Mast. Suyest Surendra Kavlekar
Son of late Surendra Kavlekar,
Minor and
 - 2b. Mast. Saiesh Surendra Kavlekar
Son of late Kavlekar, minor
- Both residents of H. No.320,
Sasonamoddi, Cacora-Cuchorem, Goa,
Amendment carried out,
as per Order dated 30.09.2015.
3. Smt. Suchitra Surendra Kavlekar,
Wife of Shri Surendra Vassant Kavlekar,
Major in age, Occupation,
Household work,
 4. Shri Narendra Vassant Kavlekar,
Son of Shri Vassant Kavlekar,
Major in age, occupation, business,
Married and his wife
 5. Smt. Rupa Narendra Kavlekar,

Wife of Shri Narendra Vasant Kavlekar,
Major in age, occupation,
household work,

6. Smt. Vidhya Rajendra Kavlekar,
Wife of late Rajendra Kavlekar,
Major in age, occupation,
Household work,

All Indian Nationals, all residents of
H. No.320,
Sasonamoddi, Cacora-Curchorem,
Goa.

7. Smt. Shaila Krishna Velgekar,
Daughter of late Shri Vasant Kavlekar,
Major in age, occupation,
household work,
Married and her husband.

8. Shri Krishna Velgekar (expired)
Major in age, retired,
Both Indian Nationals,

Both residents of
Sapendra, Old Goa.

9. Smt. Sunanda Ratnakar Toraskar,
Daughter of Shri Vassant Kavlekar,
Major in age, occupation,
household work,
Married and her husband.

10. Shri Ratnakar Toraskar,
Major in age, both Indian National,
Both residents of Podwal Khorzuvem,
Taluka, Bardez-Goa.

11. Smt. Meena Nanada Kholkar,
Daughter of Shri Vassant Kavlekar,
Major in age, occupation,
household work,

Married and her husband,

12. Shri Nanda Kholkar,
Major in age, Both Indian Nationals,
Both residents of Ballimath Balli,
Taluka, Quepem,

13. Smt. Shoba Shekar Khandeparkar,
Daughter of Shri Vassant Kavlekar,
Major in age, occupation,
household work,
Married and her husband

14. Shri Shekar Khandeparkar,
Major in age, both Indian Nationals,
Both residents of Chichole,
Taligao, Panaji Goa.

..... Petitioners

V e r s u s

1. Shri Vaman Sanvlo Vaidhya
Son of late Sanvlo Vaidhya,
Major in age, married and his wife;

2. Smt. Sumitrabai Vaman Vaidhya,
Wife of Vaman Sanvlo Vaidhya,,
Major in age, occupation,
household work,
Both Indian Nationals,
Both residents of Sawantwada,
Cacoda, Curchorem, Goa.

..... Respondents

(All above addresses are te registered addresses of the parties)

Shri P. Talaulikar, Advocate for the Petitioners.

Shri F. E. Noronha, Advocate for the Respondents.

CORAM: C. V. BHADANG, J.

DATE: 27TH SEPTEMBER, 2017.

ORAL JUDGMENT:

Rule, made returnable forthwith. The learned counsel for the respondent nos.1 and 2 waives service. Heard finally by consent of parties.

2. The petitioners/plaintiffs have filed a suit for declaration and correction of survey records in which the respondent nos.1 and 2 filed a written statement on 25/9/2013 setting out a Will dated 28/12/1990 executed by Mr. Sanvle Vaman Vaidya and raising a contention that the suit is bad for non joinder of necessary parties, as set out in the written statement.

3. The petitioners filed an application for addition of parties under Order 1 Rule 10 (2) of C.P.C on 2/12/2016 which was opposed on behalf of the respondent nos.1 and 2. The learned trial court by the impugned order dated 29/3/2017 has dismissed the said application which order is subject matter of challenge in this petition.

4. I have heard Shri Talaulikar, the learned counsel for the petitioners and Shri Noronha, the learned counsel for respondent nos.1 and 2 and perused record and the impugned order.

5. The learned trial court has found that in para 1 of the written statement it was pleaded that the suit is bad for non joinder of necessary parties as the widowed sister of defendant no.1 and her children have not been made parties. The learned trial court has further found that para 2 of the application for impleadment was not in consonance with the written statement filed by the defendants. Further in para 3 of the application for impleadment the petitioners had pleaded that by inadvertence the sister of the defendant nos. 1 and her children and children of the defendant no.1 remained to be added as defendants.

6. During the course of the arguments at bar the learned counsel for the petitioners did not dispute that out of inadvertence there was some mistake in drafting that application. However, that itself may not be sufficient to reject the same. The learned trial court has found that the petitioners have acted in a casual manner and the application was not supported by verification and affidavit. The last reason may not be entirely correct as the application is supported by verification which is duly sworn before the officer of the Court . It is significant to note that it is the defendant nos. 1 and 2 who had raised a plea that the suit is bad for non joinder of concerned necessary parties.

7. Shri Noronha, the learned counsel for the respondents nos. 1 and 2 submitted that the suit may be barred by limitation as against the proposed defendants as the cause of action in the suit is shown to have accrued in the month of August 2011. He, therefore, submits that in any event the impleadment cannot be allowed. The learned counsel has placed reliance on the following decisions:-

(i) Ms. C. Doctor and Company Ltd. and anr. Vs. M/s. Belwal Spinning Mills Ltd. AIR (1995) Allahabad 19.

(ii) Sobhanadri Appa Rao Bhadur Vs. Parthasarathi Appa Rao Savai Aswa Rao Bhahdur and others, AIR (1932) Madras 583.

(iii) Probodh Lal Mukerjee Vs. Nilratan Adhikary, AIR (1936) Calcutta 193.

8. Section 21 of the Limitation Act provides that, where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party. The proviso appended to Section 21 says that where a Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date. It can thus be seen that as a normal rule, the suit as against the newly

added defendants shall be deemed to be instituted on the date on which the defendants are impleaded. This, however, is subject to an order of the Court as provided for in the proviso to section 21. In the present case, according to the petitioner the factum of existence of the Will was brought to the notice of the petitioner only on 25/9/2013, when the written statement was filed.

9. In the case of **M/s. C. Doctor and Company Ltd. (supra)** the Court has specially come to the conclusion that the suit claim was barred by limitation as against the proposed defendants. The court observed that the order refusing to implead M/s. Progressive Transport Agency as a defendant was correct as Progress Transport Agency was neither a necessary nor a proper party to be impleaded. It can thus be seen that the said case essentially turned on its own facts.

10. In the case of **Sobhanadri Appa Bahadur (supra)** the suit was dismissed for non joinder of a necessary party. The Division Bench of the Madras High Court held that the addition of a plaintiff, whose claim has become time barred does not cure the defect.

11. Lastly in the case of **Probodh Lal Mukerjee (supra)** the defendant had taken an objection at the earliest possible moment that the suit

was bad for non joinder of a necessary party, namely, the other widow of the deceased, however, no amendment was asked for to implead her and therefore, the suit was held to be liable to be dismissed.

12. Apart from the fact that the aforesaid cases turned on their own facts, in none of the cases the Court had an occasion to consider the effect of the proviso to section 21 of the Limitation Act. Therefore, in my considered view the cases cited above, cannot come to the aid of the petitioner in this case.

13. Considering the overall circumstances, I find that the impleadment can be allowed subject to the issue of limitation being left open to be decided by the trial court at the hearing of the suit in accordance with section 21 of the Limitation Act. Needless to mention that the newly added defendants shall be entitled to raise all contentions as may be available in law and the trial court shall decide the issue whether the impleadment relates back to the filing of the suit or otherwise. With this the petition is allowed. The impugned order is hereby set aside. The application Exhibit 31 filed by the petitioners is allowed. The necessary impleadment to be carried out within two weeks. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

Ap/

