

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 824 OF 2017

VITHOBA SHAMBA SHETYE AND 2 ORS., ... Petitioners

Versus

ALFREDO ANTONIO MENEZES (DEC) THR.
HIS LRS. AND 6 ORS., ... Respondents

Mr. Ulhas Tari, Advocate for the petitioners.

Coram:- C. V. BHADANG, J.

Date:- 27th November 2017

P.C.

Heard Shri Tari, the learned Counsel for the petitioners, for some time.

2. By this petition, under Article 227 of the Constitution of India, the petitioners are challenging the order dated 16/03/2017, passed by the learned District Judge in C.M.A. No.74/2014. That was an application filed by the respondent no.5 before the learned District Judge, praying that the suit before the Trial Court does not abate. According to the petitioners, on the death of the respondent nos.3 and 4 (plaintiff nos.3 and 4), who died during pendency of the suit, their legal heirs, were not brought on record.

3. It is contended that although the respondents had filed an application dated 11/02/2013 to delete the names of respondent nos.3 and 4 on the ground that they have expired and right to sue

survives, no orders were passed by the Trial Court except an order "filed". It is submitted that the petitioners had not given any No Objection to the said application and it was the intervenors, who had given No Objection.

4. I have considered the submissions and perused the impugned order.

5. The learned District Judge found that the respondent nos.5 and 6 are the legal heirs of the respondent no.4, being sons of the respondent no.4 and as such, the estate of the respondent no.4 has been duly represented by the respondent nos.5 and 6. In that view of the matter, no exception can be taken to the finding that the suit has not abated in as much as the estate was represented and right to sue survives. Non-passing of any formal order on the application dated 11/02/2013, would not be decisive, once some of the legal representatives of the deceased plaintiffs, are already on record, representing the estate and where the right to sue survives. In such circumstances, no case for interference is made out.

6. The petition is, accordingly, dismissed.

C. V. BHADANG, J.

SMA