

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 662 OF 2017

MR. THOMAS AMBROSE BRAGANZA AND
ANR.,

... Petitioners

Versus

MR. IGNATIUS BRAGANZA AND ANR.,

... Respondents

Mr. Myron D'Souza Menezes, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 1st August, 2017

ORAL ORDER:

Heard the learned Counsel for the petitioners.

2. The petitioners, who are the defendant nos. 1 and 2 before the Trial Court, are challenging the orders dated 16.02.2017 and 23.06.2017, passed by the learned Trial Court.

3. The respondent no. 1 has filed a suit for partition and separate possession of the suit property, in which the petitioners are the defendant nos. 1 and 2. The respondent no. 2, who happens to be the wife of the respondent no. 1 has been added subsequently, as defendant no. 3. Before the addition of the respondent no. 2 as party-respondent, the petitioners filed a written statement, inter alia raising a defence that the suit is barred by limitation. After the addition of the defendant no. 3, it is contended that the suit is barred by limitation as against the

defendant no. 3 also. The petitioners filed an application (Exhibit-D/79) to frame an issue on limitation.

4. The learned Trial Court by the impugned order dated 16.02.2017, has dismissed the said application (Exhibit-D/79). By the subsequent order dated 23.06.2017, the learned Trial Court has refused to review the earlier order. Hence, this petition.

5. It is submitted by the learned Counsel for the petitioners that the Trial Court is in error in holding that the suit for partition does not attract any period of limitation. The learned Counsel, however, does not dispute that the cause of action for filing the suit would be from the date on which the partition is demanded and refused. He submits that the cause of action as shown in para 7 of the plaint i.e. on receipt of reply by the petitioners to the notice on 16.02.2002, cannot be said to be the date on which, the cause of action is said to be accrued.

6. I have carefully considered the circumstances and the submissions made. At the outset, the learned Trial Court is not justified in holding that there is no period of limitation prescribed for a suit for partition. The suit for partition would be governed by the residuary clause i.e. Article 113 of the Limitation Act (see the case of SANJAY KAUSHISH Vs. D.C.

KAUSHISH & OTHERS, AIR 1992 DELHI 118). Thus to that extent, the learned Counsel for the petitioners is justified in saying that the application (Exhibit-D/79), could not have been rejected on the ground that no period of limitation is prescribed. However, in my considered view, no interference is called for in the final order dismissing the application (Exhibit-D/79).

7. As noticed earlier, it is not in dispute that the cause of action for filing a suit for partition arises when a demand for partition is made and the same is refused. It is a matter of record that the petitioners had sent a notice reply on or about 16.02.2002, denying the claim for partition. It can thus be seen that the cause of action for filing a suit arose sometime in the month of February, 2002 and the suit, which is filed on 23.12.2002, is thus within limitation. Article 113 of the Limitation Act prescribes a period of three years, as the limitation for suits which are not provided elsewhere in the Schedule. Thus, in my considered view, no interference is called for in the impugned orders, although, for reasons different than those articulated by the learned Trial Court.

The petition is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

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