

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 328 OF 2018

POTO MAHADEV GAONKAR (DEC) REP.
THR. LRS. AND 10 ORS.,

... Petitioners

Versus

SAVITRI POTO GAONKAR (DEC) THR.
LRS AND 7 ORS.,

... Respondents

Shri Ashwin D. Bhobe, Advocate for the petitioners.

Shri Vilas P. Thali, Advocate for the respondent nos.1(a&b), 2 and 3.

Coram:- C. V. BHADANG, J.**Date:- 15th June 2018****ORAL ORDER :**

Heard Shri Bhobe, the learned Counsel for the petitioners and Shri Thali, the learned Counsel for the respondent nos.1(a), 1(b), 2 and 3, for some time.

2. The petitioners are challenging the order dated 29/01/2018, passed by the learned District Judge, thereby rejecting the application Exh.18 for bringing the LR's of the present respondent no.5 (original plaintiff no.10) on record and for condonation of delay and setting aside abatement.

3. It appears that the petitioners along with the respondent no.5 (being plaintiff no.10) had filed a suit against the respondents on 22/03/1999. The suit was decreed on 30/07/2011 against which

the respondents carried an appeal being RCA No.153/2011. The said appeal was partly allowed and the suit was remanded to the Trial Court on 19/07/2012. It is undisputed that the respondent no.5 (original plaintiff no.10) died on 27/12/2010 i.e. during the pendency of the suit. However, his legal representatives were not brought on record. In Regular Civil Appeal No.153/2011, the respondents joined the widow of plaintiff no.10 as his legal representative. Even after remand, neither the cause title of the suit was formally amended to show the plaintiff no.10 as deceased nor any application was made to bring his LRs on record. After remand, the suit came to be dismissed on 05/05/2016 against which, the petitioners filed Regular Civil Appeal No.55/2016 again showing the original plaintiff no.10 as respondent no.6. The petitioners filed an application for bringing the LRs of the respondent no.6 on record, along with an application for condonation of delay and setting aside abatement, which was opposed on behalf of the respondents. The learned District Judge, by the impugned order, has dismissed the said application.

4. Shri Bhobe, the learned Counsel for the petitioners has submitted that once the respondents in their appeal being RCA No.153/2011 had arrayed the widow of plaintiff no.10 as his legal representative, the same, for all practical purposes, enures to the benefit of the petitioners in the suit also. Reliance in this regard is placed on the decision of the Supreme Court in the case of

Mithailal Dalsanagar Singh and others VS. Annabai Devram Kini and others; 2003(4) Mh.L.J.721. It is submitted that the respondents themselves having arrayed the widow of plaintiff no.10 as the respondent in their appeal, cannot now conceivably oppose the application.

5. Shri Thali, the learned Counsel for the respondent nos.1(a), 1(b), 2 and 3 has supported the impugned order.

6. It is submitted that unlike in the decision of the Supreme Court in the case of ***Mithailal*** (supra), where there was an appeal against ad interim injunction, in the present case, the appeal was filed by the respondent against final decree passed in the suit. He submits that there are serious laches on the part of the petitioners in not bringing the LRs of plaintiff no.10 on record despite knowledge about his death.

7. I have carefully considered the rival circumstances and the submissions made.

8. The appeal is still pending. It is an admitted position that the decision of the Supreme Court in the case of ***Mithailal*** (supra) was not brought to the notice of the learned District Judge, when the impugned order was passed. In my considered opinion, it would be appropriate if the learned District Judge reconsiders the

application on its own merits, after hearing the parties. In such circumstances, the petition is partly allowed. The impugned order is hereby set aside. The learned District Judge shall consider the application (Exhibit-18) afresh, after hearing the parties and in accordance with law and without being influenced by the observations made in the impugned order. The petition is disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA