

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 607 OF 2018

NAMDEV RAJARAM GAWDE, REP. BY
PETITIONER NO. 2 AND ANR., ... Petitioners

Versus

WAMAN SADASHIV JOSHI AND 2 ORS., ... Respondents

Ms. Namrata Gawde, Petitioner No. 2, in person.

Shri Prasheen Lotlikar, Advocate for the Respondent Nos. 1, 2
and 3.

Coram:- C. V. BHADANG, J.

Date:- 9th August 2018

ORAL ORDER:

The challenge in this petition, at the instance of the petitioners (original defendant nos. 1(e) and 1(f)), is to the judgment and order dated 28.02.2018, passed by the learned District Judge at Mapusa in Miscellaneous Civil Appeal No. 122/2016. By the impugned judgment, the learned District Judge has confirmed the order dated 28.09.2016, passed by the learned Civil Judge Junior Division at Pernem in Civil Miscellaneous Application No. 15/2016 in Regular Civil Suit No. 53/2008. By the said order, an application for review, filed by the respondents has been allowed.

2. The brief facts are that the petitioners are the original defendant nos. 1(e) and 1(f) in Regular Civil Suit No. 53/2008, filed by the respondents (original plaintiffs). The petitioners filed an application for amendment of the written statement on 05.05.2016. The learned Trial Court allowed the said application vide order dated 20.06.2016. The respondents filed an application for review of the said order, on the ground that the learned Counsel for the petitioners was heard in another Regular Civil Suit No. 37/2012 and not in Regular Civil Suit No. 53/2008.

3. The learned Trial Court by an order dated 28.09.2016 has allowed the said application, thereby recalling the order dated 20.06.2016. The petitioners unsuccessfully challenged the said order before the learned District Judge in Miscellaneous Civil Appeal No. 122/2016, which was dismissed on 28.02.2018. Hence, this petition.

4. I have heard petitioner no. 2 in person. Incidentally, the petitioner no. 2 is an Advocate, who also represents her husband, who is the petitioner no. 1. I have also heard Shri Lotlikar, the learned Counsel for the respondents. Perused record.

5. It is contended by the petitioner no. 2 in person that the review application could not have been allowed, as there was no

error apparent on face of the record of order dated 20.06.2016. It is submitted that the respondents did not make out any case about there being any misconception and as to which suit, out of the two suits was taken for hearing on the application for amendment. It is therefore, submitted that the order needs interference.

6. On the contrary, it is submitted by Shri Lotlikar, the learned Counsel for the respondents that admittedly, there is another suit bearing Regular Civil Suit No. 37/2012 filed by the petitioners, in which also, there was an application for amendment of the plaint. It is pointed out that the respondents had given no objection for allowing the same. It is submitted that both the suits, namely, Regular Civil Suit No. 37/2012 (filed by the petitioners) and Regular Civil Suit No. 53/2008 (filed by the respondents) were fixed on the same date. It is submitted that the application for review was supported by an affidavit of the concerned Advocate. It is therefore, submitted that the learned Trial Court has rightly granted the application for review.

It is submitted that in any case, there is no prejudice caused to the petitioners, in as much as, the application for amendment, shall be heard by the learned Trial Court, afresh.

7. I have considered the circumstances and the submissions made and I find that no case for interference is made out.

8. Admittedly, there are two suits, one each filed by the petitioners and the respondents against each other, which are pending before the same Court. Admittedly, both these suits were fixed on 20.06.2018 for hearing on application for amendment filed in both the suits. The respondents had given no objection for grant of the application for amendment filed in Regular Civil Suit No. 37/2012, in which the petitioners are plaintiffs and had sought amendment of the plaint. Be that as it may, there appears to be some misconception, as to which suit was taken up for hearing on the application for amendment. In this case, Advocate Sangodkar has filed an affidavit setting out the said misconception and both the Courts below have accepted his affidavit. I have carefully gone through the order passed by the learned Trial Court as also the judgment of the learned District Judge and I see no reason to take a different view. The learned Counsel for the respondents is right in contending that there is no manifest injustice caused to the petitioners, in as much as, the application for amendment of the written statement filed by the petitioners in Regular Civil Suit No. 53/2008, would be heard afresh and would be decided in accordance with law, on its own merits.

In such circumstances, I see no reason to interfere with the impugned order under the supervisory jurisdiction under Article 227 of the Constitution of India. The petition is accordingly

dismissed with no order as to costs.

C. V. BHADANG, J.

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