

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 170 OF 2019**

Amardeep Gokuldas Madkaikar & 4
others

.... Petitioners

Versus

Shaila alias Shailya Devidas Naik alias
Shailya Sushila Shirodkar & 19 others

.... Respondents

Mr. Valmiki Menezes with Ms. S. Narvekar, Advocates for the
Petitioners.

CORAM : C.V. BHADANG, J.

DATE : 2nd July, 2019

ORAL ORDER:

The challenge in this petition is to the part of the
order dated 15.06.2018, passed by the learned Trial Court,
refusing to recast issue nos. 6 and 7.

2. The learned Trial Court, on the basis of the rival
pleadings, had framed the following eight issues on 23.12.2016:

1. *Whether the plaintiffs prove that the Deed of Succession dated 27.06.2007 was executed with malafide intention and the same is fraudulent, and that they are entitled to have the said deed declared illegal, null and void ?*
2. *Whether the plaintiffs prove that the birth certificate of the defendant no. 1 is a false and fabricated document and that they are entitled to have the said certificate declared illegal, null and void ?*

3. *Whether the plaintiffs prove that the deceased Sushila Shirodkar was not married to Surya Mahadev Shirodkar, and that, the defendant no. 1 is neither the legitimate nor illegitimate daughter of late Surya Mahadev Shirodkar ?*
4. *Whether the plaintiffs prove that they along with the defendant nos. 2 and 7 to 20 are the legal heirs of late Surya Mahadev Shirodkar and are entitled for a declaration that they are the legal heirs of late Surya Mahadev Shirodkar ?*
5. *Whether the plaintiffs prove that the defendant no. 1 with the help of the suit deed and suit certificate is trying to grab the property and other amounts in the Bank, along with the articles in the Bank locker of the deceased Surya Mahadev Shirodkar ?*
6. *Whether the defendant nos. 1 and 3 to 5 prove that the birth of defendant no. 1 was registered by late Surya Mahadev Shirodkar before the competent authority and that she is the sole and universal heir of late Surya Mahadev Shirodkar ?*
7. *Whether the defendant no. 1 proves that late Surya Mahadev Shirodkar had safe deposit vault in his name and in the name of the defendant no. 1 in Bank of India ?*
8. *Whether the defendant no. 1 proves that the Deed of Trust dated 28.02.2002 was obtained fraudulently by misrepresentation by Rajaninath Shirodkar from late Surya Mahadev Shirodkar ?*

3. The petitioner filed an application Exhibit-D/106 to recast issue nos. 3, 6 and 7 and for deletion of issue no. 8. The

petitioners want the issue nos. 3, 6 and 7 recast as under:

3. *Whether the plaintiffs prove that Surya Mahadev Shirodkar is unmarried and the defendant no. 1 is neither the legitimate nor illegitimate daughter of late Surya Mahadev Shirodkar ?*

6. *Whether the defendant no. 1 proves that Surya Shirodkar and Sushila Shirodkar are legally wedded couples and her birth was out of valid wed lock and her birth was registered by late Surya Mahadev Shirodkar before the Mamlatdar Ponda Taluka ?*

7. *Whether the defendant no. 1 proves that late Surya Mahadev Shirodkar had safe deposit vault in his name and that she is entitled for the same as sole and universal legal heirs of Surya Mahadev Shirodkar ?*

4. The learned Trial Court, by the impugned order, has allowed the deletion of issue no. 8. The learned Trial Court has also found that the issue no. 3 needs to be recast as prayed. However, the learned Trial Court has refused to recast the issue nos. 6 and 7. Hence, this petition.

5. In this petition, a notice for final disposal was issued on 28.03.2019. In spite of service, the contesting respondent nos. 1 and 2 remained absent. Hence, the petition is being disposed of finally upon hearing the learned Counsel for the petitioners.

6. Mr. Menezes, the learned Counsel for the petitioners pointed out that although, the learned Trial Court had found that the issue no. 3 needs to be recast, the issue has not been recast as yet.

7. Indeed it appears that the learned Trial Court had come to the conclusion that the issue no. 3 needs to be recast. If the said part of the order, is not actually given effect to, the learned Trial Court shall recast the issue no. 3 appropriately, as prayed by the petitioners.

8. On hearing the learned Counsel for the petitioners and on perusal of the pleadings, I find that issue nos. 6 and 7 can be recast. Issue no. 6 needs to be recast slightly in a different manner, than what is proposed. Issue nos. 6 and 7 would be recast as under:

6. Whether, the defendant no. 1 proves that Surya Mahadev Shirodkar and Sushila Surya Shirodkar are legally wedded couple and her birth was out of the said wedlock and her birth was registered before the Mamlatdar, Ponda Taluka and that she is the sole and universal heir of Surya Mahadev Shirodkar ?

7. Whether, the defendant no. 1 proves that late Surya Mahadev Shirodkar had safe deposit vault in his name and in the name of the defendant no. 1 in Bank of India ?
9. The petition is allowed in the aforesaid terms.

C. V. BHADANG, J.

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