

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.77 OF 2017

Shri Basilio Santana Castelino
alias Shri B.S. Castelino

... Appellant

Versus

State of Goa & Ors.

... Respondents

The appellant in person.

Shri Pravin Faldessai, Additional Government Advocate for the Respondents No.1 to 4.

Shri Iftikhar Agha and Shri Ketan Morajkar, Advocates for the Respondents No.6 & 7.

Shri C.A. Coutinho, Advocate for the Respondents No.8,9,10 & 15.

**Coram:- R. D. DHANUKA &
NUTAN D. SARDESSAI, JJ.**

Date:- 25th March 2019

ORAL ORDER :

By this appeal, the appellant seeks to impugn the order dated 15/04/2017 passed by the learned District Judge-2, Panaji allowing the application filed by the respondents no.6 & 7 under Order VII Rule 11 of the Civil Procedure Code and rejecting the plaint on the ground of non-disclosure of cause of action and also on the ground that the suit is barred by law of limitation. Some of the relevant facts for the purpose of deciding this appeal are as under:

2. The appellant was appointed as a Receiver by the learned Sub-Divisional Magistrate, Ponda by judgment and order dated 23/05/2003 in Chapter Case No.MAG/145/30/2003. Under Section 146 of the Code of Criminal Procedure, a Receiver can be appointed by the Magistrate if the case is one of emergency or if he decides that none of the parties are in possession of the disputed property or if he is unable to satisfy himself as to which of them was then in such possession of the disputed property. Such Receiver shall have the powers of a Receiver appointed under the Code of Civil Procedure Code, 1908. The appellant was also appointed as an Arbitrator in that matter.

3. The proceedings between those parties were subsequently settled before the learned Arbitrator. In the said proceedings filed under Section 145, the appellant who was appointed as a Receiver and an Arbitrator informed the Sub-Divisional Magistrate, Ponda that compromise terms had been settled and the arbitration award has been given to the parties who were in possession of those properties. The appellant requested the learned Sub-Divisional Magistrate to close the case by award dated 06/11/2003. He also filed copies of the arbitration award before the learned Sub-Divisional Magistrate, Ponda.

4. In view of the award rendered by the appellant who was also appointed as a Receiver, the learned Deputy Collector (SDO) declared that the judgment and order dated 24/05/2003 was final in view of the final settlement arrived at between the parties. However in the said order it was inadvertently not mentioned that the appellant stood discharged in view of the appellant already having rendered an arbitral award and the proceedings between the parties having been settled.

5. It is not the case of the appellant that the petitioner was also a party to the said proceedings or had any independent rights in any of the properties which were subject matter of those proceedings. The respective parties to those proceedings including the arbitral proceedings have already received what they were entitled to under the said arbitral award. The appellant however continued to act as a Receiver though the proceedings in which he was appointed as a Receiver culminated into the final award and finally came to be disposed off. He filed a frivolous suit in the Court of the learned District Judge, North Goa, Panaji (Civil Suit No.6/2016) against various authorities and also the private parties inter alia praying for a decree that the appellant as Receiver appointed by the Court of Sub-

Divisional Magistrate at Ponda by judgment and order dated 23/05/2003 and as Arbitrator for settlement by compromise in respect of the suit land was the holder of the suit land and owner in possession and holder and occupant class I to be recorded in the said Survey Record of Rights by mutation and for various other reliefs.

6. It was the case of the defendants no.6 & 7 in the said proceedings that since the appellant was only appointed as a Receiver temporarily in the proceedings initiated under Section 145 of the Criminal Procedure Code and was appointed as an Arbitrator and his appointment came to an end in view of the final order passed by the learned Sub-Divisional Magistrate in those proceedings in terms of the arbitral award, he could not have filed any suit in his capacity as a Receiver or as an Arbitrator. The defendants no.6 & 7 had accordingly filed an application under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 in the said suit inter alia praying for rejection of the plaint. The learned District Judge passed a detailed order in the said application and rejected the plaint filed by the appellant on the ground of non-disclosure of cause of action as well as on the ground of limitation. The appellant has impugned

the said order passed by the learned District Judge in this appeal.

7. Mr. Basilio Santana Castelino, the appellant who appears in person states that the learned Sub-Divisional Magistrate, who had appointed him as a Receiver has not discharged him and thus he is entitled to proceed to act as a Receiver in respect of the properties which were subject matter to the said proceedings under Section 145 of the Code of Criminal Procedure and thus the suit filed by him by various reliefs was maintainable. He submits that in any event if this Court comes to a conclusion that the appellant is already discharged as a Court Receiver he has nothing further to add. He submits that if this Court comes to a conclusion that he was not discharged by the learned Sub-Divisional Magistrate, it is his duty to protect the property of the Government and to file various returns in respect thereof with various authorities.

8. The learned Counsel for the respondents no.6 & 7 on the other hand invited our attention to the order passed by the Sub-Divisional Magistrate, Ponda and would submit that since in those proceedings filed under Section 145 of the Criminal

Procedure Code the appellant was only appointed as a Receiver and as an Arbitrator by exercising powers of the Sub-Divisional Magistrate under Section 145 of the Criminal Procedure Code and in view of the appellant having been appointed as a Receiver and as an Arbitrator and those proceedings came to be settled in view of the arbitral award, the role of the appellant as a Receiver came to an end. He submits that the appellant could not continue to act as a Receiver once the proceedings itself in which he was appointed came to an end.

9. The learned Counsel for the respondents no.6 & 7 also invited our attention to the roznama of the proceedings before Sub-Divisional Magistrate and would submit that the appellant himself had applied for closure of the proceedings in view of the arbitral award rendered by him as an Arbitrator. The Sub-Divisional Magistrate recorded the statement made by the appellant and closed the proceedings in terms of the arbitral award. He submits that the learned District Judge was justified in allowing the application filed by the respondents no.6 & 7 under Order VII Rule 11 of the Civil Procedure Code on the ground of non-disclosure of cause of action and also on the ground of limitation.

10. A perusal of the record indicates that it is not the case of the appellant that he was in any manner concerned with the properties which were the subject matter of the proceedings under Section 145 of the Criminal Procedure Code before the Sub-Divisional Magistrate. The learned Sub-Divisional Magistrate had exercised powers under Section 145 of the Criminal Procedure Code and had appointed appellant as a Receiver of the properties in view of the dispute between the private parties and in respect of the properties in question. The appellant was also appointed as an Arbitrator between the private parties. It is not in dispute that the appellant has rendered arbitral award. In terms of the arbitral award parties have compromised the dispute.

11. A perusal of the roznama of the learned Sub-Divisional Magistrate clearly indicates that the appellant himself had filed the copy of the arbitral award before the Sub-Divisional Magistrate and had requested to close the proceedings. The learned Sub-Divisional Magistrate had accepted the application of the appellant and the settlement arrived at between the parties. In our view, the appointment of the appellant as a Receiver which was by way of an interim order in the said

proceedings which proceedings ultimately culminated in the final order, the appointment of the appellant as a Receiver came to an end. Be that as it may, the appellant has rendered a arbitral award in the matter. In our view the appellant thus can not continue to act as a Receiver in the said proceedings which has disposed off finally.

12. Since the appellant did not have any right, title or interest of any nature in the property in question even otherwise the appellant could not have filed a suit for the reliefs as prayed in the suit before the learned District Judge. In these circumstances, the respondents no.6 & 7 rightly filed the proceedings under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 interalia praying for rejection of plaint on the ground of the plaint not disclosing cause of action and also on the ground of limitation.

13. We have minutely observed the records as well as the impugned order passed by the learned District Judge rejecting the plaint on the ground that the plaint did not disclose any cause of action for the appellant to file the suit as also on the ground of limitation. We do not find any infirmity in the order

passed by the learned District Judge allowing the application filed by the respondents no.6 & 7. We, therefore, pass the following order:

O R D E R

The First Appeal is dismissed in the above terms.

NH **NUTAN D. SARDESSAI, J.**

R. D. DHANUKA, J.