

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 715 OF 2018

LAXMANRAO VITHOBA RANE SARDESAI
AND ANR.,

... Petitioners

Versus

SHAKUNTALA DAULATRAO RANE
SARDESSAI (DEC) REP. BE HER LRS.
RESP. NO. 2 TO 10 AND 9 ORS.,

... Respondents

Mr. R. G. Ramani and Mr. P. Shenvi Kakodkar, Advocates for
the Petitioners.

Mr. Ashwin D. Bhobe and Ms. Kalpa Govenkar, Advocates for
the Respondent nos.2 to 8.

Coram:- C. V. BHADANG, J.

Date:- 19th June 2019

ORAL ORDER

The challenge in this petition is to the order dated 13.03.2018 passed by the learned Civil Judge Junior Division, Sattari, at Valpoi in Regular Civil Suit No.76/2015. By the impugned order, the learned Trial Court has dismissed application (Exhibit D-23) filed by the petitioners for exclusion of counter claim under Order VIII Rule 6C of the Code of Civil Procedure (CPC, for short).

2. The petitioners are the plaintiffs, while the respondents are the defendants, in Regular Civil Suit No.76/2015 pending before the Trial Court.

3. The petitioners have filed the aforesaid suit, inter alia, for a declaration that Inventory Proceeding No.11/2013 on the file of the Civil Judge Junior Division, Sattari, at Valpoi, which was initiated by the respondent no.1 on the death of her husband Daulatrao Rane, is null and void as having been initiated by fraud. The respondents filed written statements and raised a counter claim seeking declaration that the Inventory Proceedings no.4/2001 on the file of the learned Senior Civil Judge at Bicholim, which were initiated by the petitioner no.1 (defendant no.1 in the counter claim) on the death of his mother Smt. Gopikabai Vithoba Rane Sardessai, is null and void having been initiated by fraud.

4. The petitioners filed an application, (exhibit-D-23), for exclusion of the counter claim on the ground that the relief sought in the plaint and the counter claim are distinct inasmuch as in the plaint, the petitioners are seeking a declaration in respect of the Inventory Proceeding no.11/2013 while in the counter claim, the respondents are seeking declaration in respect of a different Inventory Proceeding No.4/2001. That they were decided by two different Courts. The parties to the Inventory Proceedings are different and thus the entertainment of the counter claim would entail joining of Smt. Padmavati Ramchandra Chavan Patil and 25 others as party-defendants in the counter claim, inasmuch as they were parties to the Inventory

Proceeding No.4/2001 and this will cause avoidable inconvenience and would embarrass the trial in the suit. It was contended that the counter claim is raised only to delay the trial of the suit.

5. The application was opposed on behalf of the respondents. It was contended that both the Inventory Proceedings are in respect of same properties and the essential dispute is about the distribution/partition of the properties originally belonging to late Gopika Rane Sardessai. It was contended that merely because the trial of the counter claim would entail joining of some additional parties, is not a ground for exclusion of the counter claim. It was contended that the petitioners in their written statement to the counter claim, have raised a contention about the counter claim being bad for non joinder of the necessary parties namely Padmavati Patil and 25 others and in pursuance thereof, an application is filed for addition of parties which is pending.

6. The learned trial Court has come to the conclusion that both the Inventory Proceedings pertain to the same properties and the essential issue is about the distribution/partition of the properties of Gopikabai Rane Sardessai. Thus, the learned trial Court has found that the subject matter of the two Inventory Proceedings is same and merely because some additional parties are required to be joined in the counter claim is not a ground for the exclusion of

the counter claim. The learned trial Court also negated the contention based on the two inventory proceedings being decided by two different Courts namely the Civil Judge Senior Division at Bicholim and Civil Judge Junior Division, Sattari at Valpoi on the ground that the essential challenge in the plaint and the counter claim is to the two Inventory Proceedings being initiated by fraud.

7. I have heard Mr. R. G. Ramani, the learned Counsel appearing for the petitioners and Mr. A. D. Bhobe, the learned Counsel appearing for the respondent nos.2 to 8. Perused record.

8. It is not disputed that the subject matter of both the Inventory Proceedings is same. While the petitioner is seeking a declaration about the Inventory Proceedings no.11/2013 initiated by the respondent no.1 upon the death of Daulatrao Rane Sardessai as being null and void, in the counter claim, the respondents are seeking a similar declaration in respect of the Inventory Proceedings no.4/2001 initiated by the petitioner no.1 on the death of his mother Gopika Bai Rane Sardessai, as being null and void, as being initiated by fraud. It is thus advisable that both the plaint as well as the counter claim are tried together and the respondents are not relegated to file a separate suit challenging the Inventory Proceedings no.04/2001. The learned Trial Court has rightly come to the conclusion and this will avoid

both multiplicity of proceedings as well as conflicting decisions. The fact that the trial of the counter claim requires addition of some other parties is not a ground sufficient to exclude the counter claim in this case.

9. Under Order VIII Rule 6C of the CPC, the Court can exclude the counter claim, where the Court finds that the claim of the defendants ought not to be disposed off by way of a counter claim, but in an independent suit. It is only when the Court finds that the trial of the counter claim along with the suit would embarrass the trial or would create avoidable complications that the Court can exclude the counter claim and relegate the defendants to file a separate suit.

10. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity so as it require interference.

11. The petition is without any merit and is dismissed in limine with no order as to costs.

C. V. BHADANG, J.