

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1009 OF 2018**

Cannon Fr. Santana Jacinto Dos
Remedios Faleiro & 5 Others Petitioners

Versus

Ruben Vasco Da Gama & Another Respondents

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Vinod Korgaonkar, Advocate for the Petitioners.

Mr. Ashwin D. Bhobe, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 19th July, 2019

ORAL ORDER:

The challenge in this petition is to the order dated 12.07.2018, below Exhibit-11, passed by the learned Principal District Judge, South Goa at Margao, in Regular Civil Appeal No. 85/2017. By the impugned order, application (Exhibit-11), filed by the respondent nos. 1 and 2 for transposition of the appellant no. 12 as a respondent has been allowed.

2. Cabido de Se Primacial e Cathedral De Arquidiocese de Goa e Damao (Cabido, for short), is an Association governed by a Constitution, comprising of 113 Articles, most of which are related to religious matters. As per Article-11, the Cabido is

managed by a Managing Committee consisting a President, a Treasurer, an Attorney, a Secretary and Cannons.

3. Cannon Father Assuncao Silva filed Regular Civil Suit No. 51/2002/A against the Cabido (defendant no. 12) and other cannons for declaration and for restoration of the possession in respect of the suit property. In the suit, a lease deed dated 15.03.2002, executed by the original defendant no. 3 on behalf of the Cabido (defendant no. 12), has been challenged.

4. Cabido (defendant no. 12) was represented in the suit by defendant no. 3, Canon Father Benjamin Nocolau Bossuet (since deceased). Defendant nos. 3 and 12 contested the suit, which was eventually dismissed on 31.10.2012. It may be mentioned that several defendants in the suit (except defendant nos. 3 and 12) were transposed as plaintiffs. Be that as it may, being aggrieved by the dismissal of the suit, Cannon Father Santana Jacinto dos Remedios Faleiro and others filed Regular Civil Appeal No. 198/2012, before the learned District Judge at Margao, in which, Cabido is arrayed as respondent no. 3.

5. In that Appeal, an application (Exhibit-11) was made by the appellants for transposition of the Cabido (respondent

no. 3) as an appellant. The learned District Judge, by an order dated 07.11.2013 dismissed the said application.

6. Eventually, the Appeal was allowed on 03.07.2015 and the suit was remitted back to the learned Trial Court, permitting the original plaintiffs to produce the evidence about the Power of Attorney holder and the bye-laws. After the remand, the learned Trial Court has again dismissed the suit, by a judgment and decree dated 22.09.2017, which is subject matter of challenge before the learned Principal District Judge in Regular Civil Appeal No. 85/2017. It may be mentioned that although, the Cabido was original defendant no. 12 in the suit, the original plaintiffs have shown the Cabido as the appellant no. 12 in the Appeal, without any formal order of transposition and particularly in the wake of the fact that in the earlier round of litigation, an application for transposition of the Cabido, as an appellant, was disallowed.

7. Be that as it may, the present respondents filed an application (Exhibit-11) in the Appeal, for transposition of the appellant no. 12 or for striking off the name of the appellant no. 12 as an appellant.

8. The application was opposed on behalf of the petitioners.

9. The learned Trial Court, by the impugned order, has dismissed the application. Hence, this petition.

10. I have heard Mr. Coelho Pereira, the learned Senior Counsel for the petitioners and Mr. Bhobe, the learned Counsel for the respondent nos. 1 and 2. Perused record.

11. Mr. Coelho Pereira, the learned Senior Counsel for the appellants has submitted that in view of the change of the office bearers of the Cabido, the appellant nos. 1 to 11, are in fact representing the Cabido (appellant no. 12) and as such, the appellant no. 12 was rightly shown as one of the appellants in the Appeal. It is submitted that the earlier order passed on 07.11.2013 in Regular Civil Appeal No. 198/2012, cannot operate as res judicata. It is submitted that notwithstanding the fact that the Cabido had contested the suit through the defendant no. 3, still the Cabido can now seek to challenge the judgment and decree of the dismissal of the suit.

On behalf of the appellants, reliance is placed on the decision of the Calcutta High Court In re: **Nirmalendu**

Chakraborty 1987 SCC Online Cal 47.

12. Mr. Bhobe, the learned Counsel for the respondent nos. 1 and 2, on the contrary, has supported the impugned order. It is submitted that the Cabido acting through defendant no. 3 (since deceased) had contested the suit on merits and had succeeded when the suit was dismissed and now, the Cabido cannot be allowed to challenge the said decision. It is submitted that a similar attempt to transpose the Cabido in Regular Civil Appeal No. 198/2012, as an appellant was unsuccessfully made, when the application was dismissed on 07.11.2013. It is pointed out that the said order was not challenged and has attained finality and now again, the Cabido cannot be one of the appellants, particularly when the pleadings resisting the suit claim still subsists on record. It is submitted that the decision in the case of **Nirmalendu Chakraborty** (supra) is distinguishable, as there was no contest between the defendant no. 2 and the plaintiff in that case.

13. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. It is a matter of record that the Cabido acting through defendant no. 3 had contested the suit,

which was eventually dismissed, which was challenged by the plaintiffs in Regular Civil Appeal No. 198/2012, in which, an attempt was made by the appellants to transpose the Cabido as an appellant, which was rejected on 07.11.2013. That order has not been challenged by the appellants. When the suit was dismissed after the remand, the Cabido was made one of the appellants, without seeking any formal leave, particularly when the Cabido was one of the defendants in the suit. It is the respondent nos. 1 and 2, who sought transposition of the appellants or striking off its names, which application has now been allowed by the learned District Judge. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity.

14. Under Order I, Rule 10 of CPC, the Court has power to add or strike off parties. The learned District Judge has considered that the written statement of the Cabido has not been withdrawn or amended and the pleadings in the written statement, contesting the suit are still on record and in that view of the matter, the Cabido cannot be considered as an aggrieved party, by the dismissal of the suit, only because the composition of the Cabido has changed in the interregnum. In that view of the matter, the learned District Judge thought it

appropriate to transpose the Cabido as respondent no. 6.

15. The decision in the case of **Nirmalendu Chakraborty** (supra) clearly turned on its own facts as has been rightly pointed out by the learned Counsel for the respondent nos. 1 and 2.

16. The impugned order does not exhibit any jurisdictional error nor results into any manifest injustice, requiring interference in the supervisory jurisdiction under Article 227 of the Constitution of India (see **Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329**). The appellant nos. 1 to 11 can still contest the Appeal, on facts and in law. The petition is without any merit and is dismissed with no order as to costs. Needless to mention that this Court has not expressed any opinion on the merits of the rival contentions in the Appeal.

C. V. BHADANG, J.

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