

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 125 OF 2018

TULSHIDAS BABURAI NAIK AND 8 ORS., ... Petitioners

Versus

DEVU KESHAV NAIK AND 43 ORS., ... Respondents

Mr. Joaquim Godinho, Advocate for the Petitioners.
Mr. Ashwin D. Bhobe, Advocate for the Respondent nos.4, 12,
13, 16, 17 and 20.

Coram:- C. V. BHADANG, J.

Date:- 18th February 2019

P.C.

On 30.01.2018, a notice for final disposal was issued in this petition.

2. I have accordingly heard Mr. J. Godinho, learned Counsel appearing for the petitioners and Mr. A. D. Bhobe, learned Counsel appearing for the respondent nos.4, 12, 13, 16, 17 and 20. The rest of the respondents have chosen not to appear though served.

3. The petition is accordingly being disposed off finally.

4. The petitioners who are the defendants in Regular Civil Suit No.56/14/A on the file of the learned Civil Judge, Ponda, filed an

application (Exhibit 69-D) for substitution of Mr. Dinesh Raikar as a trustee in the place of his father Mr. Nanda Raikar, who was the defendant no.6 who has since expired on 01.10.2016. It may be mentioned that the original defendant no.6, Nanda Raikar, had raised a counter claim in the suit. According to the respondents, after the death of the defendant no.6, the Managing Committee in a meeting held on 26.02.2017, appointed his son Mr. Dinesh Raikar, as a new trustee and therefore sought the impleadment of Mr. Dinesh Raikar in the place of his father, defendant no.6.

5. The application was opposed on behalf of the respondents on the ground that the defendant no.6 is not a trustee nor the Managing Committee which has allegedly appointed Mr. Dinesh Raikar as a trustee is an authorised Managing Committee. It is also submitted that as per the constitution of the trust, it is the General Body which is authorised to appoint new trustee in the place of the deceased trustees.

6. The learned Trial Court by the impugned Order dated 19.08.2017 has dismissed the application exhibit 69-D on the ground that as per Section 5 of the Indian Trust Act 1882, no trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing, signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

7. On hearing the learned Counsel for the parties, I do not find that the impugned Order can be sustained. For the present, the only issue was whether the petitioners can be allowed to substitute Mr. Dinesh Raikar in the place of his father who was defendant no.6 who has expired. There is a resolution dated 26.02.2017 passed by the Managing Committee which, according to the petitioners, is in charge of the said trust which is produced on record. Thus, subject to all the rival contentions of the parties being left open namely the status of the defendant no.6 and the authority of the alleged Managing Committee of the petitioners to pass a resolution appointing Mr. Dinesh Raikar as a trustee in the place of his deceased father, the impleadment, in my considered view, can be allowed.

8. Needless to mention that after such impleadment it would be open to the respondents, to carry out consequential amendment/to file an additional written statement to the counter claim raising all such contentions as may be available in law and fact. Mere impleadment of Shri Dinesh Raikar would not confer any right or authority on the said trustee who is being impleaded. It will be open to the learned Trial Court to frame an appropriate issue which will be decided at the trial. Rival contentions of the parties in this regard are kept open.

9. Subject to this, the impugned order is quashed and set aside. The application is allowed. Necessary amendment to be carried out within two weeks from today.

10. In such circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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