

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 16/2013

Shri Vinay Ganesh Prabhu Dessai,
aged 48 years, service, residing at G4,
Ground Floor, "B" Building, Kurtarkar
Residency Co-op. Hsg. Society, Opp.
Multipurpose High School, Borda,
Margao, Goa - 403 602.

Petitioner/Orig.
... Defendant

Versus

1. GOVERNMENT OF GOA, through
its Dy. Conservator of Forest South
Goa Division, Margao, Goa.
2. SHRI NARENDRA ATMARAM
SINAI NADKARNI, (Since
Deceased), Major of age,
represented by his legal
representatives:
 - a) SHRI. YOGESH NARENDRA SINAI
NADKARNI (son), aged 42 years,
Advocate, residing at F9, 2nd Floor,
Pratibha Co-operative Housing
Society, N. D. Naik Road, Aquem
Alto, Margao, Goa - 403 601.
 - b) SMT. SHUBHADA YOGESH SINAI
NADKARNI, (daughter-in-law),
aged 40 years, housewife, residing
at F9, 2nd Floor, Pratibha Co-
Operative Housing Society, N.D.
Naik Road, Aquem Alto, Margao,
Goa - 403 601.
 - c) SHRI. BHUPESH NARENDRA
SINAI NADKARNI (son), aged 39
years, residing at F9, 2nd Floor,

Pratibha Co-operative Housing Society, N. D. Naik Road, Aquem Alto, Margao, Goa - 403 601, service.

- d) SMT. MUGDHA BHUPESH SINAI NADKARNI, (daughter-in-law), housewife, aged 35 years, residing at F9, 2nd Floor, Pratibha Co-operative Housing Society, N. D. Naik Road, Aquem Alto, Margao, Goa - 403 601.
- 3. SMT. INDIRA NARENDRA SINAI NADKARNI (wife), aged 77 years, housewife, residing at F9, 2nd Floor, Pratibha Co-operative Housing Society, N.D. Naik Road, Aquem Alto, Margao, Goa - 403 601.
- 4. SHRI. NAGUESH ATMARAM SINAI NADKARNI, (Since Deceased) , Major of age, represented by his legal representatives:
 - a) ADV. ATMARAM ALIAS SUSHANT NAGUESH SINAI NADKARNI, (son), aged 49 years, Advocate, residing at "Aashray", Behind Hotel Goa International, Miramar, Caranzalem, Panaji, Goa.
 - b) SMT. MUKTABAI alias SANJYOT ATMARAM SINAI NADKARNI, (daughter-in-law), aged 46 years, service, residing at "Aashray", Behind Hotel Goa International, Miramar, Caranzalem, Panaji, Goa.

- c) SHRI. PRASHANT NAGUESH SINAI NADKARNI (son), aged 47 years, service, residing at A2/3, Paradise Apartment, Power House Road, Aquem Alto, Margao, Goa - 403 601.
- d) SMT. SMITA PRASHANT SINAI NADKARNI (daughter-in-law), aged 43 years, housewife, residing at A2/3, Paradise Apartment, Power House Road, Aquem Alto, Margao, Goa - 403 601.
- 5. SMT. AMBIKABAI alias VASSUDHA NAGUESH SINAI NADKARNI, housewife, aged 76 years, residing at "Aashray", Behind Hotel Goa International, Miramar, Caranzalem, Panaji, Goa.
- 6. SHRI. ESWONTA alias YESHWANT SURENDRA SINAI NADKARNI, (Since Deceased), major of age, represented by his legal representatives :
 - a) SMT. SANGITA YESHWANT SINAI NADKARNI (wife) aged 38 years, C/o. Shri. Shivram Vaman Dessai, residing at H. No. 259, Mayinwada, Korgaon, Pernem, Goa - 403 512.
- 7. SMT. VIJAYLAXMI VINAY PRABHU DESSAI, housewife, aged 43 years, residing at G4, Ground Floor, "B" Building, Kurtarkar Residency Co-Op. Hsg. Society, Opp. Multipurpose High School, Borda,

Margao, Goa - 403 602.

8. SMT. SULAKSHA SURENDRA SINAI NADKARNI, (Since Deceased) major, represented by Legal Heirs as per Sr. No. 5 a) & Sr. No. 6 and 7 as above:
9. SMT. KISHORI SOMNATH SINAI KHANDEPARKAR, aged 86 years, residing at 413, "Shri Ganesh Prasad", Shri Krupa Nagar, Shirshirem, Borim, Ponda, Goa - 403 401, housewife.
10. SHRI. SOMNATH VISNUM SINAI KHANDEPARKAR, (Since Deceased), major of age, represented by his legal representatives :
 - a) SHRI. KAILAS SOMNATH SINAI KHANDEPARKAR, service, (son), aged 55 years, residing at 413, "Shri Ganesh Prasad", Shri Krupa Nagar, Shirshirem, Borim, Ponda, Goa - 403 401.
 - b) SMT. KARTIKI KAILAS SINAI KHANDEPARKAR, housewife, (daughter-in-law), aged 50 years, residing at 413, "Shri Ganesh Prasad", Shri Krupa Nagar, Shirshirem, Borim, Ponda, Goa - 403 401.
 - c) SHRI MAHENDRA SOMNATH SINAI KHANDEPARKAR, (son), aged 53 years, Advocate, residing at Flat No.2, Dr. Borges Building, Vasco-da-Gama, Goa - 403 802.

- d) SMT. MADHAVI MAHENDRA SINAI KHANDEPARKAR (daughter-in-law), aged 49 years, housewife, residing at Flat No.2, Dr. Borges Building Vasco-da-Gama, Goa - 403 802.
- e) SHRI. VISHNU alias VINAY SOMNATH SINAI KHANDEPARKAR (son), aged 50 years, service, residing at Master Tarrace Apartment, Ground Floor, Murida, Fatorda, Margao, Goa - 403 602.
- f) SMT. VISHAKA VISHNU SINAI KHANDEPARKAR (daughter-in-law), aged 46 years, housewife, residing at Master Tarrace Apartment, Ground Floor, Murida, Fatorda, Margao, Goa - 403 602. ... Respondents/ Orig.Defendants

Mr. Sudin Usgaonkar, Senior Advocate with Mr. Ashwin N. Ramani, Advocate for the Petitioner.

Ms. Priyanka Kamat, Additional Government Advocate for Respondent No. 1.

CORAM: M.S. JAWALKAR, J.

RESERVED ON: 26th NOVEMBER, 2020.

PRONOUNCED ON: 4th DECEMBER, 2020.

JUDGMENT:

The present Revision Application is filed by the

petitioner/original defendant being aggrieved by the Order dated 11.01.2013 passed by the learned District Judge-2, South Goa, Margao in Civil Suit No. 24/2012/FTC/I, whereby the application dated 28.09.2012 of the petitioner and respondent nos. 2 to 10 (f) (original defendants) under Order VII Rule 11(d) of the Code of Civil Procedure (CPC, for short), for rejection of the plaint was dismissed.

2. It is submitted that there was one application dated 12.02.1982 under Section 14(3) of the Goa, Daman and Diu Land Revenue Code, 1968 (L.R. Code, for short) was moved before the Deputy Collector Margao, which came to be registered under No. LRC/TITLE/11/82. The said application was by the predecessor of the original defendants Mr. Narendra Atmaram Nadkarni, Mr. Naguesh Atmaram Sinai Nadkarni and Mr. Prabhakar Yeshwant Sinai Nadkarni, claiming that the property "Digalsorod" also know as "Digal" in Vichundrem village within the limits of Village Panchayat of Netravali in Sanguem and registered

under No. 13361 of Book B-37 and in the Revenue office under Matriz No. 191 and 193 and surveyed under new Survey No. 51/1(part), 52/1 to 52/14 and 53/1(part) as their property.

3. The Deputy Collector and SDO at Quepem allowed the said application vide his judgment and order dated 21.09.2001. On 07.01.2002, the respondent no. 1, original plaintiff preferred an Appeal before the Administrative Tribunal from the order dated 21.09.2001 vide Revenue Appeal No. 75/2006. The said Appeal came to be dismissed by judgment and order dated 12.05.2011. On the same day i.e. on 12.05.2011, respondent no. 1 herein applied for certified copy, which was ready on 19.05.2011 and was delivered to respondent no. 1 on 23.05.2011.

4. A corrigendum dated 20.05.2011 was drawn by the Administrative Tribunal in Case No. 75/2006 in order to correct the clerical errors arising in judgment dated

12.05.2011, of which, the certified copy was delivered to respondent no. 1 on 23.05.2011.

5. The respondent no. 1 preferred a Civil Suit under Section 14(4) of the L.R. Code on 23.05.2012 for setting aside the order dated 12.05.2011 of the learned Administrative Tribunal in Appeal No. 24/2012/FTC/I. It is the contention of the applicant that the said suit was barred by limitation in view of specific provision under sub-sections 4 and 5 of Section 14 of the Land Revenue Code, which reads as follows:

14. Title of Government to lands etc. -

(1)

(2)

(3)

(4) Any person aggrieved by an order made under sub-section (3) or in appeal or revision there from may institute a civil suit to contest the order within a period of one year from the date of such order, and the decision of the civil court shall be binding on the parties.

(5) Any suit instituted in any civil court after the expiration of one year from the date of any order passed under sub-section (3) or, if appeal or revision application has been made against such order within the period of limitation, then from the date of any order passed by the appellate or revisional authority, shall be dismissed (though limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff has had due notice of such order.

6. In view of the above provisions, the applicant/original defendant moved an application dated 28.09.2012 under Order VII Rule 11(d) of the CPC for rejection of the plaint as it was apparently barred by the Law of Limitation. Learned Civil Judge while dismissing the application recorded finding as under:

“The judgment and order dated 12/05/2011 is incomplete and inconclusive without the corrigendum dated 20/05/2011. The said

judgment and order dated 12/05/2011 has to be read as a whole alongwith the corrigendum dated 20/05/2011, which copy was admittedly, issued to the plaintiff on 23/05/2011.”

7. It is contended that this finding itself is sufficient to indicate that the impugned order has to be set aside and the plaint ought to be rejected forthwith, in as much as the requisite condition for filing of the suit was “due notice of the order dated 12.05.2011” of the learned Administrative Tribunal, dismissing the Appeal. The said order was pronounced in the open Court on 12.05.2011. Accordingly, the suit ought to have been filed on or before 12.05.2012. However, the same came to be filed on 23.05.2012, which is barred by limitation.

8. It is submitted that Section 14(4) of the L.R. Code makes it mandatory to file a suit by an aggrieved person within a period of one year from the date of such order. In view of Section 14(5) of the L.R. Code, any such suit

instituted in any Civil Court after the expiration of one year from the date of any order passed under sub-section (3) shall be dismissed, provided that the plaintiff has due notice of such order. The order sought to be contested by way of the suit was the order dated 12.05.2011 of the learned Administrative Tribunal, dismissing the Appeal. As it was pronounced in the open Court, they were having due notice of the order. Not only this, they have applied for certified copy of the same on the same day i.e. 12.05.2011.

9. It is submitted that the learned Civil Court failed to exercise jurisdiction vested in it. In view of Order VII Rule 11(d) of the CPC, the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Learned Tribunal felt that as corrigendum issued on 20.05.2011 is part of the judgment and order dated 12.05.2011, the judgment and order dated 12.05.2011 is incomplete and inconclusive without the corrigendum dated 20.05.2011. The said judgment and

order dated 12.05.2011 has to be read as a whole along with the corrigendum dated 20.05.2011, which copy was admittedly issued to the plaintiff on 23.05.2011. This finding is erroneous and illegal. Learned Counsel for the applicant further submitted that the requisite for filing the suit was the “due notice” of the order dated 12.05.2011. Learned District Judge has not even appreciated the nature of the corrigendum, which is merely clerical i.e. the correction in the date of judgment and order of the Deputy Collector and SDO, against which, the Appeal was carried out and second correction was that the Tribunal inserted the words “I conclude” instead of “I do not find” in the last paragraph of the original order. As such, there was no change brought about in the said operative part i.e. “the Appeal is dismissed” by the said corrigendum dated 20.05.2011.

10. It is also contended by the learned Counsel for the applicant that the learned District Judge treated the suit as

an Appeal. It is further submitted that the Law of Limitation, particularly Section 5 of the Limitation Act, 1963, does not contemplate condonation of delay, where the suit is filed beyond prescribed period.

11. The defence of the respondent/original plaintiff i.e. State of Goa is that cause of action arose initially on 12.05.2011 when the Administrative Tribunal passed the order thereby dismissing the Appeal and second time on 20.05.2011, when the corrigendum to the said order was issued. The plaintiff received the corrigendum on 23.05.2011 and therefore, the suit is within limitation. Learned Additional Government Advocate for respondent, Ms. Priyanka Kamat submitted that Revision is liable to be dismissed.

12. Learned Counsel for the applicant has also drawn my attention to Section 195 of the Goa, Daman and Diu Land Revenue Code, 1968 and Rules, wherein it is provided

that provisions of Sections 4, 5, 12 and 14 of the Limitation Act, 1963, shall apply to the filing of the appeals and applications or for revision or review under the Act. Thus, there is no application of Section 5 in respect of the suit. It is only applicable to the appeals and applications. It is submitted that Section 12(2) of the Limitation Act is applicable to the application and appeal where the period in obtaining certified copy can be excluded.

13. The learned Counsel for the applicant relied on **Hardesh Ores (P) Limited Vs. Hede and Company, (2007) 5 SCC 614** wherein Hon'ble Apex Court held as follows:

“The language of Order VII Rule 11 of CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. 'Law' within the meaning of Order VII Rule 11(d) must include the law of limitation as well”.

14. The learned Counsel also relied on judgment of this Court dated 03.09.2010 in First Appeal No. 174/2009 in the case of **State of Goa and Others Vs. Shri Eknath Dhavlo Gaonkar and Others**. In the said matter, State of Goa filed Appeal against the order of District Judge, wherein the learned District Judge had rejected the suit under Order VII Rule 11(d) of CPC. The question involved in the said matter before this Court was whether the learned District Judge was right in reckoning the period of limitation for filing the suit, provided for by sub-section (4) of Section 14 of the L.R. Code, 1968 from 10.09.2007 (date of order) or whether it ought to have been reckoned from 29.10.2007 as contended on behalf of the State of Goa.

15. In the said matter, the claimants claimed certain portions of the property surveyed under No. 13/1 of village Neturlim. The said claims were registered before the Deputy Collector under Nos. 14/98 and 15/98. An inquiry was held by the Deputy Collector as per the L.R. Code and

the Deputy Collector decided on 07.10.1998 that the certain portions were in the possession of claimants. There was another order passed by the Deputy Collector 16.10.1998 with a view to give effect to the order dated 07.10.1998. Two Appeals came to be filed before the learned Administrative Tribunal, against the first order being Appeal Nos. 132 and 133 of 1998 and two Appeals against the order dated 16.10.1998 being Appeal Nos. 50 and 51 of 2000. All the four appeals were taken up by the learned Administrative Tribunal. However the first two appeals i.e. 132 and 133 of 1998 came to be decided on 10.09.2007. The Deputy Conservator of Forest was not only a party to this two Appeals, but was also present when the Tribunal passed the order dated 10.09.2007. The learned Tribunal did observe that in case the appellants succeeded or failed in the said two Appeals that would decide the fate of the Appeal Nos. 50 and 51 of 2000 and further observed that the said two Appeals i.e. Appeal Nos. 50 and 51 of 2000 would be decided separately after giving a separate hearing

to the parties.

16. This Court elaborately discussed and interpreted Section 14(4) of the L.R. Code. The Deputy Conservator of Forest instituted a civil suit. The same has to be instituted within one year from the passing of the order and further, provides that any such suit instituted after the expiry of one year from the date of order passed under sub-section (3) shall be dismissed. The learned District Judge observed that the plaintiff was party to the said proceedings and was there while passing of the said order. It is further observed that therefore, the plaintiff was duly represented and heard before the Deputy Collector as well as the Tribunal and the Tribunal vide order dated 10.09.2007 finally decided that the Appeal Nos. 132 and 133/1998 and the Appeal Nos. 50 and 51 of 2000 were only against an order to implement the rights of the parties in Appeal Nos. 132 and 133 of 1998. It was held by the learned District Judge that the cause of action for the plaintiff, therefore, had arisen 10.09.2007 in

terms of sub-section (4) of Section 14 of the said L.R. Code and therefore, the suit filed beyond one year from 10.09.2007 i.e. on 08.10.2008 is barred by limitation. This Court confirmed the order passed by the District Judge in the said Appeals and dismissed the Appeal of the State.

17. As against this, Ms. Priyanka Kamat submitted that the order passed by the learned District Judge is perfectly legal and justified. As there was corrigendum on 20.05.2011 suo motu and therefore, the date of the order has to be considered as 20.05.2011, when the order is complete in all sense. The knowledge of corrigendum itself is received by the plaintiff on 23.05.2011 when the certified copy was issued to the plaintiff and therefore, limitation will commence from 23.05.2011. It is also the contention that since an important question of forest land is involved in the matter, where the Government is the plaintiff, it requires consideration.

18. I have considered the rival contentions of the learned Counsel appearing for the parties.

19. Admittedly, there was an application filed by the applicant as mentioned above under Section 14(3) of the L.R. Code before the Deputy Collector, claiming title to the property. The said application rendered in favour of the defendants, against which, appellants/plaintiffs preferred an Appeal before the Administrative Tribunal. The said Appeal came to be dismissed on 12.05.2011 in open Court. As per Section 14 of the L.R. Code, the aggrieved person is having a remedy of suit and that too, has to be filed within one year from the date of order, provided "due notice" of the same is there to the party concerned. There is no dispute that both the parties or their representatives were present when the order came to be passed. It also appears that there was a corrigendum to the said order on 20.05.2011, as there were some typographical errors while mentioning the date of the order of the Deputy Collector i.e. instead of 21.09.2001, it

was typed as 21.09.2002. The other correction was that in the last paragraph the words "I do not find" was replaced by the words "I conclude". Rest of the order was same. As per the provisions of the L.R. Code, no suit can be entertained after a period of one year from the date of passing the order. Admittedly, the suit was filed on 23.05.2012 and the impugned order came to be passed on 12.05.2011 i.e. beyond period of one year. It is contended that certified copy was issued on 23.05.2011 and the learned District Judge held that the said corrigendum is the part of the order dated 12.05.2011 and therefore, the said order is incomplete and inconclusive without the corrigendum dated 20.05.2011. The copy of the corrigendum was received on 23.05.2011. Learned District Judge held that as the certified copy was received on 23.05.2011, the suit filed on 23.05.2012 is within limitation. In my considered opinion, the learned District Judge failed to appreciate this fact that there is a bar in the L.R. Code itself in filing of the suit beyond a period of one year. There

is sufficient long period that the legislature has provided to file suit against the order of the Revenue Authorities. The corrigendum in fact had no effect on the order passed on 12.05.2011, except the typographical errors cropped up in the date of the order passed by the Deputy Collector, knowledge of date of order was very much there to the plaintiff. The conclusion and the order is not at all disturbed by the said corrigendum. Therefore, it cannot be said that the suit is filed within limitation. There is no question of any date of receipt of certified copy as Section 12(2) of the Limitation Act applies only to appeals and applications and not to the suit. On perusal of Order VII Rule 11 of CPC, it appears that it is mandatory to reject the plaint where the suit appears from the statement in the plaint to be barred by any law. Just because suit is filed by the State, there cannot be separate yardsticks made applicable. Any proceedings barred by law means barred by law for all.

20. Paragraph 25 of the suit reads as under:

“Plaintiff state that the cause of action to file the present suit arose first time on 12-5-2011 when the Hon'ble Administrative Tribunal passed an order thereby dismissing the appeal filed by the plaintiff and the second time on 20-5-2011 when corrigendum to the said order dated 12-5-2011 issued on 20-5-2011, That the limitation period to file the present suit under section 14(4) is 1 year. That the plaintiff received the corrigendum on 23-5-2011 and therefore the present suit is within the limitation period.”

21. From this averment, it is clear that the order dismissing the Appeal admittedly came to be passed on 12.05.2011 and as per provisions of L.R. Code, no suit has to be instituted in any Civil Court after the expiration of one year from the date of any order passed. In the corrigendum the only correction is of the date of the lower court order, which is well within the knowledge of the plaintiff. The replacement of words “I conclude” instead of the words “I

do not find” do not give any separate cause of action as mentioned in paragraph 25. It does not turn on any finding and the order is the same. There is no provision which entitles the plaintiff to exclude the period, even if certified copy is received subsequent to the date of order, specifically when the order is passed in open Court when the parties/Advocates were present in the Court. Once it is clear from the plaint itself that there is no dispute on the date of passing of the order, Section 14(4) and Section 14 (5) of the L.R. Code would come into play. Thereafter, the District Judge has no other option but to reject the plaint as per Order VII Rule 11(d) of CPC as it is beyond limitation i.e. barred by L.R. Code.

22. In view of the above discussion, Revision needs to be allowed and the order passed by the learned District Judge is required to be quashed and set aside. Accordingly, I pass the following Order:

O R D E R

- (a) Revision Application is allowed.
- (b) The Order passed below (Exhibit-13) in Civil Suit No. 24/2012 i.e. application under Order VII Rule 11(d) of CPC dated 11.01.2013 passed by Adhoc District Judge-2, South Goa, Margao is hereby quashed and set aside.
- (c) The application dated 28.09.2012 (Exhibit-13) in Civil Suit No. 24/2012 is hereby allowed. Accordingly, the plaint is rejected in Civil Suit No. 24/2012/FTC/1.
- (d) No orders as to costs.

M.S. JAWALKAR, J.

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