

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 34 OF 2015**

Smt. Pushpavali Sada Gaonkar

and others.

. . . Petitioners

Vs.

Smt. Maria Joana Albertina De Souza

and others

.

. . Respondents

Shri Arjun F. Naik, Advocate for the Petitioners.

None for the Respondents.

CORAM: DAMA SESHADRI NAIDU, J.

DATE: 15TH JANUARY 2020.

ORAL ORDER:

The petitioners are the plaintiffs in Regular Civil Suit No.16 of 2007. They filed the suit against 32 defendants. Some of those defendants are said to be the co-owners along with the plaintiffs, and the others are the purchasers from those co-owners. The plaintiffs sought the relief of declaration that the sale deeds executed by those co-owners without the consent of the other co-owners, including the plaintiffs, were void.

2. One of the plaintiffs got himself examined as PW.1. During his cross-examination, based on the answers elicited by the defendants, the plaintiffs realized that they had omitted some necessary or property parties

on either side. Those left out are a few more co-owners and subsequent purchasers.

3. Maintaining that those co-owners and subsequent purchasers are necessary parties, the plaintiffs applied under Order 1 Rule 10 of CPC, to bring them on record. On the merits, through its order, dated 26.8.2014, the trial Court dismissed that application.

4. Aggrieved, the plaintiffs have filed this writ petition. Earlier, notice was said to been served on all the respondents, but none appeared. Later, this Court dismissed the writ petition for non-prosecution. Eventually, it restored the case to file. Once again, according to the petitioners' counsel, notices were issued to all the respondents. Despite service, this time, too, none appeared. He has also informed the Court that, once again, the Court issued notices to the respondents, informing them that the case would be finally heard. Again, none appeared, despite their receiving the notice.

5. I reckon the suit was filed in 2007, and this writ petition was filed in 2015 when the trial was stayed. It is not in the interest of justice to keep the matter simmer any longer. I, therefore, have taken up the matter for disposal.

6. The trial Court's order brings out two aspects. First, the defendants, in their written statement, asserted that the plaintiffs had not brought on record a few other co-owners. Despite that assertion, the plaintiffs have not taken steps to bring those left out co-owners on record. According to the trial Court the plaintiffs were negligent. Second, the trial

Court has accepted the defendants' plea that if any third party is now brought on record, after a lapse of many years, the law of limitation sets in.

7. In this context, Shri Arun Naik, the learned counsel for the petitioners, has submitted that under Order 1 Rule 10 of CPC, the petitioners want to bring on record their own spouses as co-owners. It is because of the legal compulsion under the personal laws of Goa. As no relief is sought against them, no limitation sets in. The second set of parties to be brought on record, according to Shri Naik, are the other co-owners, who have never executed any sale deeds. But they ought to be brought on the record because the suit outcome may affect them.

8. Shri Naik has further taken me to paragraphs 5 and 6 of the application the petitioners have filed before the trial Court. There they have pleaded that the remaining parties to be brought on the record are subsequent purchasers—that is, the petitioners *lis pendens*.

9. I reckon the petitioners want to bring on record, first, their spouses as the co-plaintiffs, for they are deemed co-owners under the Goan personal laws. Even in their absence, their estate stands sufficiently represented through the other co-owners—their husbands. Against their inclusion applies no law of limitation.

10. True the defendants may have taken a plea in their written statement that the plaintiffs' missing out on certain co-owners. Here, the petitioners assert that their spouses are sought to be brought on record to

impart completeness to the proceedings, and no relief is sought against them.

11. About the second set of parties to be brought on record, they are the co-owners whose names were found in the Revenue Records. But they have not executed any sale deeds. Thus, no relief is sought against them. That plea accepted, I must accept that here, too, the law of limitation does not affect their inclusion. They are, to me, proper parties, whose presence enables the trial Court to completely and effectually adjudicate the dispute.

12. Now I may turn to the third set of parties. They are said to be lis pendens purchasers. Under Section 52 of the Transfer of Property Act, the plaintiffs have no obligation to bring those lis pendens purchasers on record. But, perhaps, to avoid the multiplicity of proceedings and third-party claims, the plaintiffs wanted to bring on the record those persons, too. I see no harm to the interests of the defendants if those persons are brought on record.

Under these circumstances, I set aside the impugned order, dated 26.08.2014, and allow the writ petition. As a result, the petitioners' application under Order 1 Rule 10 of before the trial Court stands allowed. The trial Court, as a result, will permit the petitioners to carry out the necessary amendment to the plaint.

DAMA SESHADRI NAIDU, J.

AP/-