

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.907 OF 2015**

Norman Edward D'Souza

... Petitioner

Versus

Dr. Luiza Maria Ruth Blinda Fernandes

... Respondent

Shri Parag Rao, Advocate for the Petitioner.

Shri J.E. Coelho Pereira, Senior Advocate with Shri S. Karpe, Advocate for the Respondent.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 11th February 2020****ORAL ORDER :**

The petitioner sued the respondent, who is the sole defendant in Regular Civil Suit No.48/1998/F, before the Court of Civil Judge, Junior Division, Mapusa. He sought the reliefs of declaration and injunction against the respondent. The respondent filed the written statement, opposing the petitioner's claim. As seen from the rival contentions, the petitioner claims the title through one person, and the defendant through another. Those two persons—that is, the vendors of the respective parties—are unconnected.

2. Pending this suit, the petitioner's vendor has died. Later, that vendor's successors have sued the petitioner. In Regular Civil Suit No.141/2006/F, before Civil Judge Junior Division, Mapusa, they sought a declaration that the petitioner secured the title to the property by playing

fraud on their predecessor.

3. Initially, the petitioner applied for the transfer of the second suit to the Court where the first suit is pending. And he had it transferred, too. Thereafter, he has also applied for consolidation of both the suits, so there could be a common trial. But the trial Court dismissed the petitioner's application.

4. As a matter of subsequent development, the plaintiffs in the second suit brought the respondent—that is, the defendant in the first suit—as one of the defendants in that suit as well. Now, the array of the parties is as follows:

In Regular Civil Suit No.48/1998/F

Plaintiff	Defendant
Norman Edward D'Souza (Petitioner here)	Dr. Luiza Maria Ruth Blinda Fernandes (Respondent here)

In Regular Civil Suit No.141/2006/F

Plaintiffs	Defendants
The successors of D'Souza's vendor (the successors of the petitioner's vendor)	1. Norman Edward D'Souza (Petitioner here) 2. Dr. Luiza Maria Ruth Blinda Fernandes (Respondent here)

5. When the trial began in the first suit, before the plaintiff could examine himself as PW1, the trial Court recorded that “this is common evidence in both the above mentioned suits”. The petitioner is aggrieved because the trial Court, first, rejected to consolidate the suit at the petitioner's behest. But, later, it has decided, on its own, to have a common

trial. That said, the petitioner claims that the trial Court has never put him on notice about its intention. So he applied to the trial Court for the recall of the order. Then, the trial Court passed a very detailed order running into about 19 pages. Thus aggrieved, the petitioner has filed this Writ Petition.

6. Shri Parag Rao, the learned counsel for the petitioner, and Shri J.E. Coelho Pereira, the learned Senior Counsel for the respondent have argued at length. Then, I put to both the learned counsel that the trial Court ought to have notified its intention—its desire to consolidate the suits or to take common evidence—to both parties: the plaintiffs and the common defendant. I have also pointed out that detailed and justified may be the trial Court's subsequent order in response to the petitioner's plea for recall of the previous order; it has still amounted to a post-factum justification. It will not cure the defect of the trial Court's not following the principles of natural justice.

7. Under these circumstances, both the learned counsel have agreed that the matter may be remanded to the trial Court with a direction to it to hear both the parties on the question of consolidation or common evidence. Granted, the trial Court has ample powers in that regard under Section 151 of CPC, but even that power needs compliance with the principles of natural justice.

I, therefore, set aside the impugned order and remand the matter. The petition stands partly allowed. The parties to appear before the Trial

Court on 30th March 2020, at 2.30 p.m.

DAMA SESHADRI NAIDU, J.

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