

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.473 OF 2019

1. Mrs. Muriel Singh,
D/o late Mr. Antonio Joao D'Souza alias
Anthony about 72 years, married,
Housewife, holder of OCI Card
Bearing No. A-715067 issued at
London on 26.10.2010 and her husband;

2. Mr. Sewe P. Singh alias
Mr. Sewe Persaud Singh,
S/o late Rambaran Singh,
Aged about 73 years, married,
Retired, holder of PIO Card
Bearing no. P- 0001355 issued at
London origin and residents of House
No. 842/1, High View, Vaddi, Cansa,
Tivim, Bardez, Goa 403 502.

... Petitioners.

Versus

1. Maria Santana D'Souza,
Major of age, widow
R/o H.No. 124, Pearl Heaven,
Acoi, Mapusa, Bardez, Goa.

2. Mr. Lovel Delfino Deodano
Alexandre D'Souza,
son of late Mr. Antonio Joao D'Souza,
Aged about 70 years,
married, Retired and his wife;

3. Mrs. Anan Melina D'Souza,

W/o Mr. Lovel Delfino Deodano
Alexandre D'Souza,
aged about 60 years,
married, retired,
both Indian Nationals
And Residents of House No. 127/4,
Acoi, Mapusa Bardez – Goa.

4. Mr. Jeronimo Francisco D'Souza,
Last known to have resided at
House No. 127/4,
Acoi, Mapusa Bardez – Goa

5. Mr. Romaldina D'Souza,
widow of Sabino D'Souza,
last known to have resided at
House No. 127/4,
Acoi, Mapusa Bardez, Goa.

... Respondents.

Mr. J. J. Mulgaonkar, Senior Advocate with Ms. Rupa Benaulikar,
Advocate for the petitioner.

Mr. Valmiki Menezes, Advocate for the Respondent No.1.

WITH

WRIT PETITION NO. 2 OF 2019

Isabella D'souza,
W/o Mr. Joaquim D'souza,
Major of age, Indian National
R/o H.No. 447/3, Triveni Apt,
Tonca, Caranzalem, Tiswadi, Goa

(Since deceased) Through LR's

1(a). Joaquim Inacio D'souza

1(b). Jessica Dominica Francisca Aranha

1(c). Jaisan Aranha

1(d). Joel Savio D'souza

1(e). Olivia Carmel Coutinho

All residents of R/o H.No. 447/3,
Triveni Apt, Tonca, Caranzalem,
Tiswadi, Goa.

... Petitioners.

Versus

1. Mrs. Muriel Singh,
D/o late Mr. Antonio Joao D'Souza alias
Anthony John D'Souza,
Aged about 72 years, married,
Housewife, holder of OCI Card
Bearing No.A-715067 issued at
London on 26.10.2010 and her husband;

2. Mr. Sewe P. Singh alias
Mr. Sewe Persaud Singh,
S/o late Rambaran Singh,
Aged about 73 years, married,
Retired, holder of PIO Card
Bearing No.P-0001355 issued at
London on 30.06.2004, both of
Indian origin and residents of House
No. 842/1, High View, Vaddi, Cansa,
Tivim, Bardez, Goa 403 502

3. Mr. Lovel Delfino Deodano

Alexandre D'Souza,
Son of late Mr. Antonio Joao D'Souza,
Aged about 70 years, married,
Retired and his wife;

4. Mrs. Anan Melina D'Souza,
Wife of Mr. Lovel Delfino Deodado
Alexandre D'Souza, aged about 60
Years, married, retired, both Indian
Nationals and residents of House
No.127/4, Acoi, Mapusa, Bardez, Goa

5. Mr. Jeronimo Francisco D'Souza,
Last known to have resided at
House No.127/4, Acoi, Mapusa,
Bardez, Goa

6. Mr. Romaldina D'Souza,
Widow of Mr. Sabino D'Souza,
Last known to have resided at
House No.127/4, Acoi, Mapusa,
Bardes, Goa.

... Respondents.

Mr. Abhay Nachinolkar, Advocate for the petitioner.

Mr. Jayant J. Mulgaonkar, Senior Advocate with Ms. Rupa Benaulikar, Advocate for the respondents No.1 and 2.

CORAM : M. S. SONAK, J

DATE : 23rd June, 2021

ORAL JUDGMENT:

Heard Mr. J. J. Mulgaonkar, learned Senior Advocate
alongwith Ms. Rupa Benaulikar, learned Counsel for the petitioner

and Mr. Valmiki Menezes, learned Counsel for the respondent No.1 in Writ Petition No.473 of 2019.

2. Heard Mr. Abhay Nachinolkar, learned Counsel for the petitioner and Mr. Jayant J. Mulgaonkar, learned Senior Advocate with Ms. Rupa Benaulikar, learned Counsel for the respondents No.1 and 2 in Writ Petition No.2 of 2019.

3. Having regard to the substantially common nature of the issues involved, it is only appropriate that both these petitions are taken up and disposed of by a common judgment and order.

4. Accordingly, Rule is granted in both the petitions. Rule is made returnable forthwith with the consent and at the request of the learned Counsel for the contesting parties.

5. In Writ Petition No.473 of 2019, the challenge is to the order dated 25.01.2018 by which the learned Trial Judge has permitted respondent no.1 to be joined as a defendant in the suit.

6. Mr. Mulgaonkar, learned Counsel submits that the petitioner, who is the plaintiff has dominus litis. He submits that

respondent no.1 is neither a necessary party nor a proper party. He submits that such impleadment will unnecessarily expand the scope of the suit. He submits that though a declaration of title has been applied for, on cogent consideration of the averments in the plaint, the plaintiff's real grievance appears to be to the inclusion of the names of original defendants no. 3 and 4 in the survey records. He therefore submits that the impugned order dated 25.01.2018 is in excess of jurisdiction and warrants interference.

7. Mr. Menezes, learned Counsel for the respondent no.1, on the other hand, submits that in the suit, the petitioner has applied for a declaration that they are the absolute owners of the suit property. He submits that such declaration as now alleged is applied for on the ground of alleged possession. He submits that respondent No.1 has perused material on record establishing her prima facie interest in the suit property. He therefore submits that the respondent No.1 was a necessary party or in any case a proper party and the discretion has correctly been exercised by the learned Trial Judge. He therefore submits that in absence of any procedural error, this Court may not interfere with the impugned order.

8. From the perusal of the plaint, it does appear that the petitioners have sought a declaration that they are the absolute

owners in title and possession of the suit property. That apart, several other reliefs have been sought in relation to the suit property. Therefore, this is not some simple suit for correction of entries in the survey records. The respondent No.1 has produced some material on record which at least, prima facie, indicates that the respondent No.1 is not some total stranger or interloper who is trying to meddle with the suit. This material has been referred to by the learned Trial Judge in paragraphs 6 and 8 of the impugned order, in which the respondent No.1 who should have been referred to as the applicant has been erroneously referred to as the plaintiff. No doubt, the observations made in the impugned order are only prima facie and for the limited purpose of deciding whether the application for impleadment should be granted or not. Such prima facie observations will have no bearing on the final position of the suit.

9. Having regard to the nature of the reliefs applied for in the suit and the interest, prima facie, demonstrated by respondent No.1, it is difficult to hold that there is any jurisdictional error in the impugned order or that discretion has been unreasonably exercised. Accordingly, no case is made out to interfere with the impugned order dated 25.01.2018 and Writ Petition No.473 of 2019 is liable to be dismissed and is hereby dismissed.

10. Mr. Abhay Nachinolkar, learned Counsel for the petitioner in Writ Petition No.2 of 2019 points out that the challenge in this petition is to the order made by the same learned Judge dismissing the application made by the petitioner seeking impleadment in the aforesaid suit. He submits that the documents which persuaded the learned Trial Judge to allow the impleadment in the previous matter were the same documents relied upon by the petitioner in Writ Petition No.2 of 2019. He submits that these documents make reference to the ancestors of the petitioner and the interest of such ancestors in the suit property which is the subject matter of the suit. He, therefore, submits that applying the reasoning in the earlier order, this petition is required to be allowed.

11. Mr. Mulgaonkar, the learned Senior Advocate for the original plaintiff counters the submissions of Mr. Nachinolkar and defends the impugned order dated 25.01.2018 based on the reasoning reflected therein. He points out that the petitioner is not at all a proper party or a necessary party. He submits that the documents produced by the petitioner have no nexus with the suit property and, therefore, Writ Petition No. 2 of 2019 may be dismissed.

12. Again, there is merit in the submissions of Mr. Nachinolkar that in the documents relied upon by him there is some reference to the ancestors of the petitioner. Mr. Nachinolkar also pointed out that the survey records of which the original plaintiff seeks deletion are also quite vague. He submits that in the earlier survey record there was specific reference to the ancestor of the petitioner.

13. At this stage, it is too premature to decide on the final interest which the petitioner may or may not have in the suit property. However, based on the documents produced, it cannot be said that the petitioner is some total stranger or interloper who is seeking to meddle with the suit in which the relief of declaration of ownership and title has been applied for. The reasoning adopted by the learned Trial Judge in the previous matter should have, in fact, applied to this matter as well. Based upon such reasoning which have now been upheld by him, the application made by the petitioner deserves to be allowed.

14. Accordingly, the impugned order dated 25.01.2018 which is the subject matter of challenge in Writ Petition No.2 of 2019 is hereby set aside and the petitioner's application for impleadment as defendant at Exhibit B-20 is hereby allowed.

Necessary amendment to be carried out within 15 days from today. Accordingly, Rule is made absolute in Writ Petition No.2 of 2019.

15. In conclusion, Rule is discharged in Writ Petition No.473 of 2019 but made absolute in Writ Petition No.2 of 2019. There shall be no order for costs. Ad-interim order, if any, is hereby vacated.

16. All parties to now appear before the Trial Court on 12.07.2021 at 10:00AM and file authenticated copy of this order.

M. S. SONAK, J.

msr.