

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 587 OF 2019

Mr. Anant Mahadev Revonkar

Since deceased,

- 1(a) Mr. Pramod Anant Rivonkar
s/o late Mr. Anant Mahadev Rivonkar
56 years of Age, Indian National, married to
- (b) Mrs. Naina Pramod Rivonkar
w/o Mr. Pramod Anant Rivonkar
49 years of age, Indian National.
- (c) Mr. Prasad Anant Rivonkar
s/o late Mr. Anand Mahadev Rivonkar
54 years of age, Indian National, married to
- (d) Mrs. Leena Prasad Rivonkar
w/o Prasad Anant Rivonkar,
43 years of age, Indian National
- (e) Mr. Prashant Anant Rivonkar
s/o Late Mr Anant Mahadev Rivonkar
52 years of age, Indian National, married to
- (f) Mrs. Preeti Prashant Rivonkar
w/o Mr. Prashant Rivonkar
45 years of age, Indian National
All the above are R/o. Namas Titawada,
Nerul, Bardez, Goa.

..... Petitioner

V e r s u s

Shri Moti Ramchandra Banaulikar
s/o Ramchandra Banaulikar
Major in age,
resident of Namas Titawada,
Nerul, Bardez, Goa.

..... Respondents

Mr. Vivek Rodrigues, Advocate for the Petitioners.
Mr. A. D. Bhobe, Advocate for the Respondents.

Coram :- **M. S. SONAK, J.**
Date : **16th June, 2021**

ORAL JUDGMENT

1. Heard Mr. Vivek Rodrigues, learned Counsel for the Petitioners and Mr. A. D. Bhobe, learned Counsel for the Respondents.

2. Rule. Rule made returnable forthwith at the request and with the consent of the learned Counsel for the parties.

3. The challenge in this Petition is to the order dated 02.05.2019 made by the learned Trial Court in Civil Misc. Application No. 13 of 2018/C by which the Petitioners-original Plaintiffs had sought for the following relief :

“It is therefore prayed that this Hon'ble Court be pleased to order to take up the Regular Civil Suit no. 94/82 on regular board and date be fixed for hearing of the parties.”

4. The record indicated that in the suit, the Trial Court had framed the issue of Mundkarship and, thereafter referred the same to the Mamlatdar for adjudication. As yet, there is nothing on record to indicate that the Mamlatdar has decided this issue one way or the other.

5. In the roznama dated 08.09.1989, in the main suit, before the Trial Court, the following entry appears :

“Called out today before me. Notices issued to the respective advocates returned with endorsement that they are not having

briefs of their respective parties. Similarly, notices issued to the parties came back with report of bailiff that nobody knows whereabouts of the parties and this being the position inspite of all our aforesaid efforts to serve the parties as well as advocates, I think there is no reason in keeping the file alive henceforth. In view of the above, I pass the following order. Send the file to record.”

6. Mr. Bhobe, the learned Counsel, refers to clause 530 of the Civil Manual to submit that only in decided cases, the file is sent to record. He submits that from the tenure of the order dated 08.09.1989, it appears that the suit was dismissed and only thereafter sent to record.

7. On the other hand, Mr. Rodrigues, the learned Counsel, submits that the order dated 08.09.1989 does not speak of the dismissal of the suit, in which case, a Decree would have to be drawn out. He submits that even before the suit could be decided, the same was incorrectly sent to record.

8. Mr. Rodrigues also pointed out that the record indicates that none of the parties or their Advocates were actually served in the matter. He submits that since the issue of Mundkarship was pending, there was no occasion for making the order dated 08.09.1989.

9. According to me, the order dated 08.09.1989, to say the least, is quite ambiguous. Accordingly, the parties to the proceedings are required to be heard on all issues which arise in relation to the order dated 08.09.1989 and thereafter the applications made by the parties in the suit. The Petitioners had only prayed for taking up the Regular Civil Suit No. 94 of 1982/C on the regular board and fix a date for hearing of the parties.

10. Having regard to the order dated 08.09.1989, the aforesaid limited prayer for taking up the suit on regular board and fixing a date for hearing of the parties should have been granted. Thereafter, the parties could have been heard on all issues including the implications of the order dated 08.09.1989 as well as other related issues. There was no justification in refusing the prayer of even taking up the Regular Civil Suit on the regular board and fixing a date for hearing of the parties.

11. At the stage of deciding the present application, the learned Trial Judge should not have gone into the issues which it has chosen to address or make the observations which it had made. After taking the suit on regular

board and offering suitable opportunity to the parties, the matter could have been decided one way or the other. Therefore, the impugned order is hereby set aside. The Regular Civil Suit No. 94 of 1982/C is directed to be taken up on regular board and a date is to be fixed for regular hearing of the same.

12. All contentions of all parties including contentions in the suit which in fact stands dismissed, are left open for consideration by the Trial Court.

13. The Rule in the Petition is made absolute to the aforesaid extent. There shall be no order as to costs.

14. The parties to appear before the Trial Court on 30.06.2021 at 10.00 a.m. and file an authenticated copy of this order.

15. All concerned to act on the basis of an authenticated copy of this order and proceed accordingly.

M. S. SONAK, J.