

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No. 569 OF 2015

1. Modusudan Camotin Timblo
alias Modu Timblo,
since deceased through his
legal representatives.

A. Shri Auduth Timblo, Original Plaintiff No.1(a)
son of late M.C. Timblo,
major of age.

B. Smt. Anju Timblo, Original Plaintiff No.1(b)
wife of Auduth Timblo,
major of age.

Both residents of H.No.G9
La Marvel Colony,
Near Institute of Oceanography,
Dona Paula, Goa.

2. Smt. Sushilabai Modu Timblo, Original Plaintiff No.2.
major, widow of Modu Camotim
Timblo,
major of age, residing at H.No.2845,
Fr. Agnelo Road, Cupangale,
Near Chowgule College,
Margao, Goa.

... Petitioners.

Versus

1. State of Goa, Original Defendant No.2.
Through its Chief Secretary,
Secretariat, Porvorim.

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| 2. Shri Daya Bogvonto Mahale,
Major of age, Mahale Wada,
Chittikula, Sadashivgad,
Karwar. | Original Defendant No.1 |
| 3. Shri Dilip Timblo,
son of late M.C.Timblo,
major of age, | Original Plaintiff No.1(e). |
| 4. Smt. Maya Timblo,
Wife of Dilip Timblo,
Major of age, | Original Plaintiff |
| Both residents of Jaiwanti,
House No. 2845, Fr. Agnel Road,
Cupangale, near Chowgule College,
Margao, Goa. | |
| 5. Shri Prashant M. Timblo,
son of late M.C. Timblo,
major of age. | Original Plaintiff No.1(c) |
| 6. Smt. Tanaaz P. Timblo,
wife of Prashant Timblo,
major of age. | Original Plaintiff No.1(d) |
| Both residents of H. No.184/6
Fomento House,
Near Goa International Hotel,
Tonca, Miramar, Panaji, Goa. | |

... Respondents

Mr. Sudesh M. Usgaonkar with Ms. Marie Rosette Pereira, Advocate for the Petitioners.

Mr. Pravin Faldessai, Additional Government Advocate for the Respondent No.1.

Coram :- BHARATI H. DANGRE, J.

Date : 28th January, 2021

P.C:

1. Rule. Rule made returnable forthwith. Heard by consent of parties.

2. The present writ petition assails the order passed on 30.06.2015 by the District Judge-I and this order is passed on an application referred by the applicant before the District Judge under Section 152 and 153 of the Civil Procedure Code in Civil Suit No. 56/2013. By the said application it is prayed that earlier order dated 15.04.2015, by which, an earlier application securing similar relief was rejected, should be nullified.

3. With the assistance of the learned Counsel, Mr. Usgaonkar and the learned Additional Government Advocate Mr. Pravin Faldessai, I have perused the record. The proceedings have a checkered history. The petitioners filed proceedings for temporary injunction before Comarca Court at Quepem against the defendant no.1 one Daya Bogvonto Mahale which was registered as Processo no. 200070/65. With the prescribed time limit the plaintiff filed suit which came to be registered as 20901/65 in which Daya Bogvonto Mahale was impleaded as defendant no.1 and State of Goa is impleaded as defendant no.2. The suit so filed, sought a declaration

to the State of Goa to acknowledge the plaintiffs as owners and possessors of the suit property. Defendant no.1 did not contest the suit but the State, i.e. defendant no.2 claimed that the suit property comprised of a part of government forest “HATIPAULA” situated at Poinguinim. The plaintiffs examined 6 witnesses, defendants examined 6. Various documents in Portuguese language were produced by the parties.

4. The judgment dated 02.04.1990 answered some of the issues in the affirmative but on the point of jurisdiction, i.e. issue no.1, it was held that the Civil Judge Senior Division had no jurisdiction to try the suit in terms of Section 26 of the Goa Civil Code Act, 1968. It is only the District Court which is competent to try the suit since Government was a party. The First Appeal came to be instituted against the said judgment and decree. The Division Bench of this Court set aside the judgment and findings of the District Court and remanded the matter back to the Court of the Civil Judge Senior Division, Quepem. When the matter reached there, by order and decree dated 18.08.1999 the suit was partly decreed. The matter again came in appeal. However, when the said decree was assailed in first appeal before this Court, it was noted that the judgment passed is a replica of the written submissions filed before the trial Court and merely a cut-paste job was done. The appeal challenged the said judgment since it was suffered from brazen and patent illegality. The First Appellate Court on 05.04.2013 in

First Appeal no. 165/2000 set aside the impugned judgment and findings on merit and remanded the matter back to the trial Court. By recording that the Trial Court has not appreciated the pleadings of the parties and by recording that the translation of the pleadings, questionnaire on the basis of which issues have been recast-ed in the judgment, depositions, reports, etc. are not before the Court and since the Court is not conversant with the Portuguese language, it was not proper for the appellate court to determine the suit, the impugned judgment and order dated 18.08.1999 was quashed and set aside with the following direction:

(c) The trial Court shall give one final opportunity to plaintiffs to produce translations of the questionnaires, depositions, reports, documents, etc., which are in Portuguese language; shall given one final opportunity to the defendant no.2 to file written submissions, if any; shall hear fresh arguments and shall deliver fresh judgment by marshaling entire evidence on record both oral and documentary and upon proper application of mind and by rendering findings on each issue with proper reasons, in accordance with law.'

It was also directed that the proceedings should be completed as expeditiously as possible and in any case within a period of 6 months from the date of appearance before the trial Court. The R&P was also directed to be forwarded to the trial Court.

5. Down the line, from 05.04.2009, there is no progress in the said proceedings and it can be seen that on 11.09.2014, the

plaintiffs moved an application seeking limited relief to the effect that the proceedings of Embargo bearing Processo no. 20070/1965 be appended to the present suit and along with this, a plan was also annexed and since this plan is a very vital and important document for the plaintiff to assert his case, the prayer was made. On perusal of the record, the Embargo proceedings were not found to be appended alongwith court file and therefore, necessary directions were sought to the Civil Judge Senior Division, Quepem to forward the said proceedings to the District Judge, South Goa, who was dealing with the suit No.56 of 2013. Pertinent to note that on the said application being filed, the State submitted its say to the following effect:

“It is the discretion of Court whether to call file or not. Leave it to Court.”

On noting the said say, an order was passed on the said application on 15.04.2015, thereby dismissing the application on two grounds. First being that the application do not bear an specific provisions of law or the Civil Procedure Code and, secondly, if according to the plaintiffs the document is very old or vital to their case, it is for them to take necessary steps to procure the said document from the court but in absentia, the present application cannot be entertained by way of right. Pursuant to this, an application has been filed invoking powers of this Court under Section 152 and 153. The impugned order has been passed on the said application.

6. From the record it is revealed that on 09.03.1965 an order was passed by the Comarca Court at Quepem whereby Processo No.200070/65 was ordered to be clubbed with Civil Suit no.20901/65 (old) now Civil Suit No.56/2013. Accordingly, the Processo no.20070/65 were received and clubbed with Civil Suit which came to be disposed of by the Civil Judge Senior Division at Quepem by the judgment and decree dated 02.04.1990. This clubbing was necessitated in view of the provisions contained in the Civil Procedure Code. On perusal of the Civil Procedure Code applicable in the State and, in particular, the scheme contained in Chapter IV dealing with preventive and conservatory proceedings under Article 389 is relevant and it reads as under:-

'Article 389

The preventive or conservatory proceedings shall be appendage ex-officio or upon the application of the parties to the main suit moment the same is file. If the suit is instituted in other court, the preventive proceedings shall be remitted to that court.

From the time of the appendage or remittance of the file only the judge handling the suit is competent for further steps.

Ref: Article 83 sole para.'

7. By virtue of the said provision, the preventive or conservatory proceedings shall be treated as appendage ex-officio or upon the application of the parties to the main suit, the moment the suit is filed. The proceedings which were instituted by the plaintiffs

were in the nature of embargo proceedings under Article 420 and being in the nature of temporary or preventive proceedings and there is no reason why the provision under Article 389 cannot be invoked. What ultimately the plaintiff is seeking is the Embargo proceedings which were instituted by him be brought to the District Court from the Court where it were filed and since it is the mandate of the Code itself, merely saying that the plaintiff could have taken steps by preferring appropriate application for the purpose of relying upon it before the District Court can be no ground to deny the said relief. Further, it can be very well seen that the application has been specifically filed by invoking Section 152 of the Civil Procedure Code which deal with amendment of judgments, decrees or orders. Apart from this, under Section 153 there is a general power conferred on the Court which may at any time quash or otherwise amend any defect or error in any proceeding in a suit and this is amendment necessarily has to be for attaining the purpose of determining the real question or issue raised by or depending on such issues.

8. In such circumstances, the hesitancy on part of the court below to disallow the application on the two grounds cannot be sustained. Since the State Government do not seriously object to the said relief and left it to the discretion of the Court, which in fact was competent to allow the proceedings to be brought before the District Court. In any event, the main suit will have to be adjudicated since the proceedings are pending since 1965 and even after the remand on

the second occasion by this Court in 2013, it is informed that the proceedings have not progressed. In any contingency, it is for the Court to permit the parties to move ahead and ensure that proceedings are concluded within the shortest period of time and also ensure that directions of time bound conclusion are complied with. Otherwise also no prejudice is being caused to any party on this account.

9. Resultantly, the petition is allowed in respect of prayer clause (a) and (b).

BHARATI H. DANGRE, J

msr.