

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 209 OF 2022

BALKRISHNA INSULKAR AND ANR ...Petitioners.

VS

CHITRA BADRINARAYAN @ B.

CHITRA AND 17 ORS.

...Respondents.

Mr. N. Dubey, Advocate for the respondent no.1

Respondent no.2 present in person.

Mr. P. A.Kamat, Advocate for the respondent no.1 and 2.

Mr. S. P. Munj, Addl. Govt. Advocate for the respondent nos. 12,13 and 15.

Mr. R. Kantak, Advocate for the respondent no.18

MISC CIVIL APPLICATION NO. 2057 OF 2022-F

IN

WRIT PETITION NO. 209 OF 2022.

E.P. BADRINARAYNAN

...Applicants.

VS

BALKRISHNA INSULKAR AND 15

ORS

...Respondents.

Applicant no.1 present in person.

Mr. N. Dubey, Advocate for the applicant. no.2.

Mr. P. A.Kamat, Advocate for the respondent nos.1 and 2.

Mr. S. P. Munj, Addl. Govt. Advocate for the respondent nos. 12,13 and 15.

Mr. R. Kantak, Advocate for the respondent no.18

CORAM: G. S. KULKARNI, J.
DATE: 23 NOVEMBER, 2022.

P.C.:

1. This petition assails two orders dated 6 April 2022. The first order passed by the learned District Judge-3, Panaji. The first order is passed on an application filed below Exh.D-81 by the petitioners/plaintiffs whereby an application under Order VI Rule 17 CPC praying for amendment of the plaint has been rejected by the following order:

“Heard arguments.

2. *It has been held in K.A. Khader Vs. Rajamma John Madathil (AIR 1994 ker 122) that the effect of doctrine of lis pendens as embodied in Section 52 of The transfer of Property - Act is not to annul all Voluntary transfers by parties to a suit but only to render it subservient to the rights of parties thereto under the decree or order which may be made in that suit. Its effect is only to make the decree passed in the suit binding on the transferee, if he happens to be a third party person. The transfer however will remain valid subject however to the result of the suit.*
3. *In view of the case law stated above, there will be no cause of action against ISKCON till this Suit is disposed off. The amendment application does not survive on this account. Hence, the application is rejected without costs. Pronounced in the Open Court.”*

2. The second order which is assailed is an order passed by the learned District Judge on an application of the petitioners/plaintiffs

filed below Exh. D-82, which was an application to implead International Society for Krishna Consciousness (ISKCON) as a defendant in the suit. Said application came to be rejected considering the earlier order passed below Exh. D-81. The said order reads thus:-

“Heard arguments.

- 2. The plaintiffs had filed an amendment application to include the cause of action against the proposed defendant (ISKCON) in the plaint. The said amendment application has been rejected. On account of the same this application also does not survive. Hence, the application is rejected without costs.*

Pronounced in the Open Court.”

3. It is on this backdrop, I have heard learned Counsel for the parties. It is not in dispute that in the proceedings of First Appeal No.286/2008 by an order dated 25 November 2016, in view of the subsequent transfer of the land in question in favour of the ISKON by respondent nos.1 and 2 by way of Gift Deed i.e rights were created in favour of ISKCON and for such reason this Court had observed that ISKCON had become a necessary party in the appeal. Thus on impleadment of ISKCON in First Appeal No.286/2008, ultimately the first appeal came to be adjudicated by judgment and order dated 1 October 2021 by which the said appeal was partly allowed directing

the trial Judge to frame an additional issue and the suit be decided a fresh after permitting the parties to lead additional evidence. Accordingly proceedings on remand are before the trial Court. It is on such remand the application in question was moved upon which the impugned order has been passed.

4. I have heard learned Counsel for the parties and also perused the impugned order and the record.

5. In my opinion, as it is not in dispute that ISKCON was impleaded as a party in First Appeal No. 286/2008, ISKCON would also become appropriate and a proper party to the suit, on remand as certainly a relief as prayed in the suit would now become relevant also against ISKCON, as they have now being transferred the suit property. Accordingly, let ISKCON be impleaded as a party to the suit. Necessary amendments to be carried out within a period of two weeks from today.

6. Insofar as the impugned order dated 6 April 2022 passed on the application of the petitioners on the basis of the subsequent developments, for amendment of plaint in question is concerned, in my opinion, the order does not furnish, sufficient and adequate

reasons, as also the respective contentions of the parties to the suit are not reflected in the said order.

7. It is thus, in the interest of justice that said order is set aside, with a further direction that the application of the petitioners/plaintiffs praying for amendment of the plaint be decided afresh after hearing all the parties, on their respective contentions and an appropriate order in accordance with law be passed on such application of the petitioners/plaintiffs.

8. Petition is disposed of in the above terms

9. Ordered accordingly.

10. As disputes between the parties are subjudice for quite some time, it would be appropriate that the application of the petitioners/plaintiffs praying for amendment of the plaint be taken up for hearing at the earliest and in any case be decided within a period of four weeks of the parties appearing before the trial Court, with a copy of the present order. Parties are at liberty to file further reply affidavits to the said application, if the need so arises. All contentions of the parties in that regard are kept open.

11. Misc. Civil Application No. 2057 of 2022-F would also not

survive. It is accordingly disposed of.

G. S. KULKARNI,J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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