

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA**

**SECOND APPEAL NO.64 OF 2022  
AND  
CIVIL APPLICATION NO.1825 OF 2022 (F)**

Mr. Ramchandra Halwai (now deceased)  
through his Lr.R.s. 78 yrs.

1 Shantidevi R. Halwai, (since deceased)  
major of age,  
wife of Ramchandra Halwai,  
Represented by Appellants No.2 to 9)  
73 years

2 Bharatlal R. Halwai,  
major of age, son of Ramchandra  
Halwai, 51 years,

3 Chandradevi B. Halwai,  
major of age, 41 years,

4 Bijay Prakash R. Halwai,  
major of age,  
son of Ramchandra Halwai, 48 years,

5 Jyoti B. Halwai,  
major of age, 46 years,

6 Munnalal R. Halwai,  
major of age,  
son of Ramchandra Halwai, 51 years

7 Neelam M. Halwai,  
major of age, 44 years

8 Geeta G. Gupta,  
major of age,  
daughter of Ramchandra Halwai,  
49 years,

9 Gyan Prakash Gupta,  
major of age, 50 years,  
all with address at H.No.MB-14,  
Housing Board Colony,  
Vasco-da-Gama, Goa.

....Appellants

***Versus***

1 Benedito Carvalho,  
aged 60 years, resident of  
H.No.337, Sindolim, Sancoale, Goa.

2 Jose Carvalho,  
aged 46 years, resident of  
H.No.337, Sindolim, Sancoale, Goa.

3 Mariano Piedade Lucas,  
aged 59 years, resident of  
H.No.304, Sancoale, Goa.

4 Milagres Carvalho,  
aged about 40 years, resident of  
H.No.337, Sindolim, Sancoale, Goa.

....Respondents

**Mr. R.G. Ramani, Senior Advocate with Mr. Pranav  
Kakodkar, Advocate for the Appellants.**

**Mr. J.J. Mulgaonkar, Advocate for the Respondents.**

**CORAM: M. S. SONAK, J.**

**DATE : 9<sup>th</sup> DECEMBER 2022**

**ORAL ORDER :**

1. Heard Mr. R. G. Ramani, learned Senior Advocate who appears along with Mr. P. Kakodkar for the Appellants and Mr. J. Mulgaonkar for the Respondents.

2. The Appellants are the original Defendants and the Respondents are the original Plaintiffs in Regular Civil Suit No. 10/2018/A instituted in the Court of the Civil Judge Senior Division, Vasco-da-gama, Goa.

3. In the suit, the Plaintiffs claim a declaration that the judgment and decree dated 28.06.2013 passed by the Joint Mamlatdar of Mormugao in Case No. Mor/Tnc/3/1999 is a nullity *inter alia* on the ground that the same was made against the predecessors of the Plaintiffs when in fact, such predecessors had already expired on 13.10.2000 and 29.06.2002. The Plaintiffs contended that no legal representatives of their deceased predecessors, including themselves, were brought on record before the Joint Mamlatdar.

4. The Appellants/Defendants filed their written statement contending that the legal representatives were very much part of the record before the Joint Mamlatdar. They claimed that the legal representatives also took part in the proceedings after the demise of their predecessors through their duly engaged Advocates.

5. Mr Ramani learned Senior Advocate for the Defendants submitted that the Plaintiffs are taking advantage of the fact that

no formal amendment was carried out to the cause title. Based on this, it was urged in the written statement that the suit be dismissed.

**6.** After filing the written statement, the Defendants applied Order VII Rule 11 of the Civil Procedure Code for rejection of the Plaint. This Application, dated 14.01.2019, reads as follows:

*"IN THE COURT OF THE CIVIL JUDGE, SENIOR  
DIVISION, AT VASCO-DA-GAMA*

*Regular Civil Suit no. 10/2018/A*

*Benedito Carvalho & Ors*                      *,, Plaintiffs*

 $V/s$ 

*Shri Ramchandra Halwai*

(since deceased Through legal heirs) ... Defendants

APPLICATION UNDER ORDER 7 RULE 11  
OF CIVIL PROCEDURE CODE 1908

*MAY IT PLEASE YOUR HONOUR:*

*The defendants above named most respectfully submit as under:-*

*1. The plaintiff has prayed in para 16 of the Plaint as under:*

*"16 (a) it be declared that judgment and decree dated 28-6-2013 passed by the Joint mamlatdar -II of Mormugao at Vasco-da-Gama in Case no. Mor/Tnc/3/1999 (JM-II) is a nullity at law, not binding on plaintiffs and not conferring any right whatsoever*

*upon defendant with respect to any part of survey no. 126/1 of Village Sancoale, Taluka of Mormugao.”*

*2. The plaintiffs by way of this suit have challenged the Judgment and Order dated 28-6-2013 of Joint Mamlatdar-II of Mormugao Taluka at Vasco-da-Gama in Case no. Mor/Tnc/3/1999 (JM-II).*

*3. This Hon'ble Court has no jurisdiction to set aside the said Judgment and Order of Joint Mamlatdar – II of Mormugao at Vasco-da-Gama in Case no. Mor/Tnc/3/1999 (JM-II) and grant the reliefs prayed.*

*4. The jurisdiction to entertain such suit is barred by section 58 of Goa Agricultural Tenancy Act, 1964.*

*5. It is, therefore, prayed that Plaint be rejected against these defendants.*

*Vasco-da-Gama, 14-1-2019.*

*V. V. Alvenkar*

*Adv. for defendants 1(a) to (b)."*

7. The Trial Court, by its order dated 19.08.2019, allowed the Application under Order VII Rule 11 of the CPC and rejected the Plaint. The Trial Court's entire reasoning is to be found in paragraph 6, and the same reads as follows:-

*"6. The Application at Exb. 15 is filed on the ground that the Plaint is barred by section 58 of the GDD Agricultural Tenancy Act, 1964. Section 58(1) is attracted if any act is done in good faith under the said Act. The plaintiffs have*

*pleaded that the said Tenancy Case was filed against the uninterested opponent Shri Vithal Jagannath Naik and prosecuted against two dead opponents namely Threasa Gama and Francisco Carvalho. It is further pleaded in the written arguments that the original defendant had made an application for bringing legal heirs of deceased parties on record, however, it was dismissed as it was not pursued and therefore the matter proceeded as it is and therefore the defendant has not acted in good faith. However, if the name of the deceased father of the plaintiff was appearing in the cause title of the said proceeding then the remedy for the plaintiff lies elsewhere."*

8. The Plaintiffs appealed to the First Appellate Court, which has, by judgment and decree dated 06.02.2020, reversed the Trial Court, dismissed the Appellants' Application under Order VII Rule 11 of the CPC, and restored the suit to the file of the Trial Court. Hence, this Second Appeal.

9. The Appellants initially instituted a Civil Revision Application under Section 115 of the Civil Procedure Code. However, considering the judgment and order dated 22.01.2020 in ***Misc. Civil Application No.903 of 2019 in STM No.2540 of 2019*** (Fr. Jose Caetano D'Costa and Anr. Vs Josinho @ Jose Colaco and Others ) delivered by the Hon'ble Justice Dama Seshadri Naidu, this revision was converted into Second Appeal and registered as such.

**10.** Mr Mulgaonkar, despite the above-referred judgment and order dated 22.01.2020, did contend that the Appeal From Order would lie. However, in my view, in this case, there is no necessity to go into this issue.

**11.** The Appellants' Application under Order VII Rule 11 of the CPC does not refer to the sub-section under which the same was lodged. However, the nearest sub-clause is (d). Order VII Rule 11(d) of the CPC provides that the Plaint shall be rejected where the suit appears from the statement in the Plaint to be barred by any law. The Appellants had contended that the suit was barred under the provisions of Section 58 of the Goa Agricultural Tenancy Act, 1964.

**12.** It is well settled that to invoke the provisions of Order VII Rule 11(d) of the CPC, the Applicant has to focus on the statements in the Plaint. If based on a statement in the Plaint, the suit appears to be barred under any law; then the Plaint can be rejected by resort under Order VII Rule 11(d) of the CPC. At the stage of consideration of an application under Order VII Rule 11(d), there is no question of the Court advertent to any defence raised in the written statement or any evidence produced in support of such defence.

13. In *Popat and Kotecha Property Vs State Bank of India Staff Association*<sup>1</sup>, in the precise context of Order VII Rule 11(d) of CPC, the Hon'ble Supreme Court has held that the averments in the plaint are the germane; the pleas taken by the Defendant in the written statement would be wholly irrelevant at that stage. Further, it is trite law that not any particular plea has to be considered, and the whole plaint has to be read. The Court also held that clause (d) of Order VII Rule 11 of CPC speaks of suit, as it appears from the statement in the plaint to be barred by any law. Therefore, the disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 of CPC. Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the Plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.

14. In this case, on a holistic reading of the Plaint, it is apparent that the Plaintiffs contend that the judgment and decree (order) made by the Joint Mamlatdar was against their predecessors who were already dead at the time when such judgment and decree (order) was made. On that ground, the Plaintiffs had urged that such judgment and decree (order) is a nullity and the same was not binding upon them. In short, a declaration was sought that

---

<sup>1</sup> (2005) 7 SCC 510

the judgment and decree (order) was a nullity producing no legal effect.

15. In *Dhulabhai Etc., Vs State of Madhya Pradesh and another*<sup>2</sup> relied upon by the First Appellate Court, the Constitution Bench of the Supreme Court has held that exclusion of the jurisdiction of civil Court is not readily to be inferred unless the conditions referred to in paragraph 35 apply. Clause (1) of paragraph 35 refers to a case where the statute gives finality to the orders of the special tribunals. In such a case, the civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. However, such provision does not exclude those cases where the provisions of the particular Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

16. The allegation in the Complaint is that the Joint Mamlatdar, in this case, by failing to bring on record the legal representatives of the Plaintiffs' predecessors, which would include the Plaintiffs, has not acted in conformity with the fundamental principles of judicial procedure when the judgment and decree concerning which the declaration is sought for in the Complaint was made against

---

<sup>2</sup> AIR 1969 SC 78

the dead predecessors of the Plaintiffs without the Plaintiffs or other legal representatives being brought on record.

**17.** Mr Ramani pointed to the Roznama in the Tenancy Case before the Joint Mamlatdar. He submitted that though there may not have been a formal amendment to the cause title, Roznama does indicate that the legal representatives, including the Plaintiffs, took part in the proceedings. He points out that they were all represented by an Advocate in the proceedings before the Mamlatdar.

**18.** As noted earlier, the Plaint can be rejected under Order VII Rule 11 of the CPC only when it is found to be barred from the statement in the Plaint. Mr Ramani's contentions are in the nature of the evidence supporting the defence raised in the Appellants' written statement. When deciding an application under Order VII Rule 11(d), such defence or evidence supporting such defence is entirely irrelevant.

**19.** As long as the Plaint instituted contains no statement based upon which it could be held that the suit was barred under any law, the Trial Court, by simply referring to the provisions of Section 58 of the Goa Agricultural Tenancy Act, was not justified in rejecting the Plaint. The jurisdictional bar may not apply where

it is established that an order was made against a dead person without bringing his representatives on record. Such an order would be the product of a breach of fundamental principles of judicial procedure and a gross violation of natural justice.

**20.** The First Appellate Court has also referred to some allegations of malafides in the Plaint. Mr Ramani's submission that there are no such allegations in the Plaint and the observations made by the First Appellate Court in this regard is based on no material. At this stage, it is unnecessary to go into this issue because a suit seeking a declaration that the judgment and decree (order) of the Joint Mamlatdar made against a dead person is nullity would be maintainable. The observations in *Dhulabhai* (supra) would also assist in maintaining such a suit or, at least, not rejecting the Plaint in such a suit unless the evidence establishes the statements in the Plaint to be false or incorrect.

**21.** If, after the evidence is tendered, the Trial Court concludes that the allegations in the Plaint were false or that the Plaintiffs took part in the proceedings before the Mamlatdar and exercised their rights of defence before the Mamlatdar. Then, the Trial Court can dismiss the suit inter alia holding that the entire cause of action as pleaded was false or decline jurisdiction given the provisions in Section 58 of the Goa Agricultural Tenancy Act.

However, considering the averments in the Plaint, this was not a case where the Plaint could have been rejected under Order VII Rule 11 of the CPC at the threshold.

**22.** For the above reasons, the substantial questions of law, as proposed in paragraph 11A of the memo of appeal, would not arise. This appeal is accordingly dismissed. However, the Appellants are granted liberty to raise all permissible defences, including the jurisdiction defence. Since such a defence is already introduced in the written statement, the Trial Court will have to frame an issue in this regard. This issue, in my view, would be one of the main issues arising in this suit.

**23.** Considering the limited number of issues in this suit, the Trial Court is directed to dispose of these issues as expeditiously as possible and, in any case, within 18 months from the date of production of an authenticated copy of this order.

**24.** The parties are directed to appear before the Trial Court on 03.01.2023 at 10.00 a.m. and file an authenticated copy of this order. If the date fixed in the suit is earlier, the copy should be filed on that date.

**25.** The parties must cooperate with the Trial Court by not seeking undue adjournments.

**26.** The Appeal and the Misc. Civil Application are disposed of in the above terms. Accordingly, there shall be no order for costs.

**M. S. SONAK, J.**

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH  
Date: 2022.12.12 18:20:32 +05'30'