

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 26 OF 2023.**

BENEDITO GONSALVES (SINCE
DECEASED) AND ANR. ... Petitioners.
VS
CABIDO DA SE PREMACIAL REP. BY
SPECIAL POA PEDRO CONCEICAO MARIO
GONSALVES AND 2 ORS. ... Respondents.

Mr. V. P. Thali and Mr. R. Prabhugaonker, Advocate for the
petitioners.

Mr. R. Sahakari, Advocate for respondent no.1.

Mr. P. Kakodkar, Advocate for respondent nos.2 and 3.

CORAM: M. S. KARNIK, J

DATED: 28th June 2023

ORAL ORDER.

1. The challenge in this petition is to an order dated 30.11.2022 passed by the trial Court. The application for bringing legal representatives of plaintiff no.1 at Exh. D-84 was dismissed. The suit was filed for cancellation of the Deed of Perpetual Lease dated 9.3.1994 executed by defendant no.1 in favour of defendant no. 2. The defendants raised defence in their written statements that the defendant no.1 was the tenant of the suit property and, therefore, the issue of tenancy was reframed by this Court and defendant no.2 was directed to move the Tribunal on reframed issue. The suit did not proceed. In the proceedings before the Tribunal, the legal representatives of deceased plaintiff no.1 were brought on record.

The order of the Tribunal was challenged in this Court. Even in this Court legal representatives of plaintiff no.1 were brought on record. Upon decision on the issue of tenancy, when the hearing of the suit commenced, the plaintiff realised that the legal representatives of plaintiff no.1 remained to be brought on record in the suit. An application was therefore made for bringing legal representatives of deceased plaintiff no.1 on record. The trial Court by a reasoned order, which is impugned in this petition dismissed the application.

2. Learned counsel for the petitioners, while assailing the order of the trial Court submitted that the proceedings before the trial Court remained stayed pending the determination of the issue of tenancy before the Tribunal and this Court in a collateral proceeding. The legal representatives of plaintiff no.1 were in fact brought before the Tribunal as well as this Court. Post determination of the issue of tenancy upto this Court, when in the suit, the hearing commenced, it was realised that the legal representatives of plaintiff no.1 were not brought on record. Hence the application.

3. Learned counsel for respondent no.2 and 3(Original defendant nos. 2 and 3) vehemently opposed the application. It is submitted that the order passed by the trial Court is a well reasoned order and cannot be said to be perverse to warrant interference. It is further submitted that plaintiffs were well aware that legal representatives of

plaintiff no.1 were required to be brought on record and when the plaintiffs had taken steps to bring the legal representatives on record before the Tribunal and this Court, in which case, the approach on the part of the plaintiffs in not bringing the legal representatives in the pending suit was casual and callous. It is the contention of the learned counsel for respondent nos.2 and 3 that legal representatives of plaintiff no.1 were brought on record in separate and distinct legal proceedings arising on an issue of determination of tenancy and therefore, merely because legal representatives are brought on record in those proceedings, will not by itself enure to the benefit of the plaintiffs in the pending suit. It is therefore submitted that the petition be dismissed.

4. I have gone through the memo of the petition, the application made for bringing legal representatives of plaintiff no.1 on record and the impugned order.

5. Petitioners had filed an affidavit dated 28.6.2023 in this Court pointing out the reasons for the delay of 3425 days in filing the application for bringing legal representatives on record and setting aside abatement.

6. Having regard to the averments made in the application, now supported by an additional affidavit, I am of the opinion that the

cause shown for the delay will have to be regarded as sufficient and delay satisfactorily explained. It will be pertinent to reproduce the contents of the affidavit filed in this Court. The relevant portion of which read thus:-

3. *The right to sue does not survive to the surviving Plaintiff No:2 alone, and the right to sue also survives to the legal heirs, whose names are mentioned hereinabove.*
4. *An application was filed by the Plaintiff No: 2, i.e myself, on 20th July 2022 at **Exb D-84** to bring on record of the suit, the aforesaid legal heirs of the plaintiff No: 1. However, no prayer for condonation of delay in filing the same, as also no prayer for setting aside abatement of the suit with regard to the deceased Plaintiff No: 1, was specifically made in the previous application.*
5. *The application to bring on record the legal heirs of the plaintiff No: 1 had to be filed on or before 04th March 2013. The application was filed on 20th July 2022. There is, therefore, a delay of 3425 days in filing the said application.*
6. *The plaintiff No: 2 has a sufficient cause for condoning the said delay of 3425 days in filing the said application as explained hereinafter.*
7. *By the judgment and order dated 16th June 2000, the Hon'ble High Court had reframed the issue No: 1 in the suit, and the following issue was framed in its place:
"Whether defendant No: 2 proves that he is the tenant of the suit property of which defendant No: 1 is the landlord?"
Hereto annexed and marked as **Exb B** is a true copy of the judgment and order dated 16th June 2000 passed by the Hon'ble High Court, in Civil Revision Application No. 71/2000.*

8. *By the same judgment and order dated 16th June 2022, the Hon'ble High Court had stayed the suit till the decision on the said issue.*
9. *By its judgment and order dated 21st December 2005, the ld. Joint Mamlatdar-II of Quepem in Case No: JM-II/TNC/Decl/ 04/2004 decided the said issue, arising in the suit and declared the plaintiffs and the defendants No:2 and 3 as joint tenants of the suit paddy field. The same judgment was reversed by the ld. Dy. Collector by his judgment and order dated 03rd September 2010 passed in Case No: SDO/SAL/TNC/ APPL/2/2008, thereby declaring the defendants No: 2 and 3 as exclusive tenants in possession of the suit paddy field. And subsequently, the Hon'ble Administrative Tribunal of Goa by its judgment and order dated 12th July 2011, passed in Tenancy Revision Application No: 22/2010, upheld the said reversal by the ld. Dy. Collector.*
10. *The original plaintiffs challenged the said judgment and order of the Hon'ble Administrative Tribunal of Goa, dated 12th July 2011, vide Writ Petition No: 649/2011, before the Hon'ble High Court, during the pendency of which the original plaintiff No: 1 expired on 04th December 2012.*
11. *The plaintiff No: 2, immediately on 28th March, 2013, filed MCA No: 481/2013 in the said Writ Petition, to bring the legal representatives of the deceased Plaintiff No: 1 on record of the petition. The said application was not opposed by any of the Defendants.*

*Hereto annexed and marked a **Exb C colly** is a true copy of the MCA 481/2013 IN Writ Petition 649/2011, along with the ld. Registrar's order passed thereto on 04th July, 2013.*

- 12. By its judgment and order dated 03rd July 2020, the Hon'ble High Court partly allowed the said Writ Petition No: 649/2011, and thereby remanded back the Tenancy Revision Application 22/2010 to the Administrative Tribunal of Goa, to decide it afresh; after setting aside the orders dated 03rd September 2010 and 12th July 2011, respectively passed by the Dy. Collector, Quepem, and the Administrative Tribunal of Goa.*
- 13. On 03rd August 2020, i.e. on the very first date of appearance before the Administrative Tribunal of Goa, after the order of remand by the Hon'ble High Court, the Plaintiff No: 2 filed a similar application before the Hon'ble Tribunal to bring the legal heirs of the deceased Plaintiff No: 1 on record of the Tenancy Revision Application No: 22/2010.*
- 14. Since there was no contest by the Defendants herein, the Hon'ble Tribunal by its order dated 16th September, 2020, allowed the said application of the Plaintiff No: 2, in accordance with which order, the cause title of Tenancy Revision Application No:22/2010 was amended by the Plaintiff No: 2.*
- 15. Subsequently by its judgment and order dated 20th April 2021, the Hon'ble Tribunal partly allowed the Tenancy Revision Application No: 22/2010, thereby declaring that the suit property is in joint tenancy*

inherited by all the legal heirs of late Manuel Gonsalves in accordance with Section 14 of the Goa Agricultural Tenancy Act.

16. *The issue of tenancy as subsequently reframed by the Hon'ble High Court by its order dated 16th June 2000, passed in Civil Revision Application No: 71/2000, having thus been finally decided by the Hon'ble Administrative Tribunal of Goa, as stated above, the Regular Civil Suit No:69/1996/B, filed by the Plaintiffs, was on 06th June 2022, ordered to be further continued by the Trial Court.*
17. *On 20th July 2022, the Plaintiff No: 2 filed an application at **Exb D-84**, before the Trial Court, to formally bring on record the legal heirs of the deceased Plaintiff No: 1 on record of the RCS 69/1996/B, in view of the fact that they were already brought on record in the proceedings before the Hon'ble High Court in Writ Petition No: 649/2011 as also before the Hon'ble Tribunal in Tenancy Revision Application No: 22/2010, in which proceedings the tenancy issue was the subject matter, relying upon the judgment of the Hon'ble Supreme Court in "**Mithailal Dalsangar Singh v/s Annabai Deviram Kini**", reported in (2003) 10 SCC 691.*
18. *That apart, the Hon'ble High Court by its order dated 16th June 2000, passed in **Civil Revision Application No: 71/2000**, had stayed the suit till the issue of Tenancy as framed by the Hon'ble High Court in this suit, was finally decided. Consequently, till the issue of tenancy was finally decided by the*

Hon'ble Tribunal, by its judgment and order dated 20th April 2021 and thereafter till this Hon'ble Court decided on 06th June 2022, to proceed further in the suit, there was no occasion for the Plaintiff No: 2 to file any application in the suit to bring the legal heirs of the deceased Plaintiff No: 1 on record of the suit.

7. Factually, not only before the Tribunal but even before this Court in a collateral proceeding, the legal representatives of plaintiff no.1 were brought on record. The wife of deceased plaintiff no.1 is already on record as plaintiff no.2. In such circumstances, no prejudice would be caused by bringing legal representatives of plaintiff no.1 on record considering that sufficient cause has been shown to condone the delay and setting aside the abatement.

8. In all fairness to the trial Court, it must be mentioned that the application for bringing legal representatives on record and the cause shown for condonation of delay was not elaborate and happily worded. The petitioners have by way of an affidavit filed in this Court furnished a detailed explanation which deserves acceptance though opposed by the learned counsel for the respondent nos.1 to 3. Though I am allowing the application at Exh. D-84, the same will be subject to costs which shall be quantified at Rs.4000/-. The costs shall be paid to the respondents within a period of two weeks from 30.6.2023 which is the next date of hearing.

9. A copy of the order shall be produced before the trial Court.
10. Consequential amendment to be carried out in the plaint within two weeks.
11. The impugned order dated 30.1.2022 is quashed and set aside.
Petition is allowed.

M. S. KARNIK J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS
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