

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.232 OF 2017

1) SHRI GANGARAM
RAMCHANDRA MALIK,
son of Shri Ramchandra Malik, aged
75 years, Indian National,
agriculturist, resident of House No. 322,
Hasapur, Pernem-Goa.

2) SHRI SABA VAMAN MALIK,
son of Shri Vaman Malik, aged 85 years,
Indian National, agriculturist, resident of
House No.326, Hasapur, Pernem-Goa.

3) SHRI CHANDRAKANT
DATTARAM MALIK, son of Shri
Dattaram Malik, aged 68 years,
Indian National, retired, resident of
House No. 321, Hasapur, Pernem-Goa.

4) SHRI BHIKAJI SHAMBA MALIK,
son of Shri Shamba Malik, aged 75 years,
Indian National, agriculturist, resident of
House No. 75 years, agriculturist,
resident of House No. 368,
Hasapur, Pernem-Goa.

....PETITIONERS

Versus

1) SHRI NAMDEV SHIVRAM MALIK,
son of Shri Shivram Malik, aged 70 years,
Indian National, agriculturist, resident of
House No, 366, Hasapur, Pernem-Goa.

2) SHRI BABU NANA MALIK,
son of Shri Nana Malik, aged 85 years,

Indian National, retired, resident a
House No. 325, Hasapur, Pernem-Goa.RESPONDENTS

Mr Parikshit Sawant, Advocate for the Petitioners.
Mr Deepak Gaonkar with Mr Akhil Govekar and Mr S.
Khorjuvekar, Advocates for Respondent No.1.

CORAM: M. S. SONAK, J.

DATE : 2nd MARCH 2023

ORAL JUDGMENT :

- 1.** Heard Mr Parikshit Sawant for the petitioners and Mr Deepak Gaonkar for respondent no.1. With the consent of the learned Counsel for the parties, the petition is taken up for final disposal.
- 2.** The petitioners' challenge order dated 05.01.2017 by which the learned Trial Court has dismissed the petitioners' application for consolidation of Civil Suits bearing Regular Civil Suit No.18/2016 and Regular Civil Suit No.36/2012.
- 3.** Mr Sawant states that the most important and common issue in both the suits is that of the alleged ownership of the respondents herein. He submits that the parties to the two suits are not substantially different. He submits that because the cause of action in the two suits may differ, there was no reason to dismiss the application at Exhibit 60 seeking consolidation of the two suits. He relies on *Prem Lala Nahata & Anr. V/s. Chandi Prasad Sikaria*¹, in support of his submissions.

1 (2007) 2 SCC 551

4. Mr Gaonkar defends the impugned order based on the reasoning reflected therein. First, he submits that severe prejudice will occasion the respondents if the two suits are consolidated. He presents that the trial would be embarrassed. Finally, he presents that there is no jurisdictional error and the decision relied upon by Mr Sawant is inapplicable or, in any case, supports the respondents' case on the issue of the proper exercise of discretion by the Trial Court in such matters.

5. Considering the material on record, I agree with Mr Gaonkar that the impugned order discloses no jurisdictional or other error to warrant interference under Article 227 of the Constitution. Moreover, from the record, as noted by the Trial Court, it appears that only one of the issues in the two suits is common. Otherwise, the causes of action and the parties are different. Therefore, merely because one of the issues is common, no party can insist on consolidating the two suits.

6. In *Prem Lala Nahata & Anr.* (supra), the Hon'ble Supreme Court held that the Court has wide discretionary power to control the conduct of proceedings where there has been a joinder of causes of action or of parties which may embarrass or delay the trial or is otherwise inconvenient. In that situation, the Court may exercise power either by ordering separate trials of the claims in respect of two or more causes of action included in the same action or by confining the action to some of the causes of action and excluding the others or

by ordering the plaintiff or plaintiffs to elect which cause of action is to be proceeded with or which plaintiff should proceed and which should not or by making such other order as may be expedient.

7. The Court also held that the Court has the power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are, by order of the Court, combined or united and treated as one cause or matter. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where two or more matters or causes are pending in the Court, and it appears to the Court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits.

8. Thus, it is clear that the Court has the power to consolidate. Still, such power is mainly to facilitate the trial of all the suits without embarrassing the trial in each case sought to be consolidated. In this case, the Trial Court has given cogent reasons why consolidation would not facilitate the trial in the two suits. The Trial Court, in paragraph 17 of the impugned order, has pointed out how the trial in the consolidated suits would not be convenient. The Trial Court has

pointed out that the other issues in the two suits have no commonality except for one of the common issues. Therefore, the nature of evidence and cross-examination would differ in the two suits.

9. The Trial Court, in this case, has given an option to the petitioners, who are the plaintiffs in Regular Civil Suit No.36/2012, to adopt the cross-examination in Regular Civil Suit No.36/20123 if they so desire.

10. From the perusal of the impugned order, no case of jurisdictional error warranting interference under Article 227 of the Constitution is made out. Accordingly, this petition is dismissed. There would be no order for costs.

11. The learned Counsel for the parties state that the parties are exploring the possibility of a settlement. It is always in the parties' interest to explore such a possibility. If the matter is settled, appropriate consent terms can be filed before the Trial Court so that both suits are disposed of at the earliest.

12. The rule is discharged. There shall be no order for costs.

M. S. SONAK, J.