

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 235 OF 2023

Leocardo Emerciano D'Sa & anr.	... Petitioners
<i>Versus</i>	
Diana D'Sa e Reveredo & 31 Ors.	...Respondents

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Pooja Naik, Advocate for the Petitioners.

Mr. James Lopes, Advocate for the Respondents.

CORAM: PRAKASH D. NAIK, J
DATED: 27th SEPTEMBER 2023

JUDGMENT

1. Heard both sides.

2. The Petitioners are aggrieved by Order dated 07.10.2022 passed by Civil Judge, Junior Division 'G' Court, Margao, Goa, below Exhibit D-27 in Regular Civil Suit No. 285 of 2017/G.

3. The Respondents filed a suit for declaration bearing Regular Civil Suit No. 285/2017/G before the Court of Civil Judge Junior Division, Margao, Goa on 24.11.2017 against the Petitioners praying that the Deed of Sale dated 23.07.2007 registered in the Office of Sub-Registrar of Salcete and Deed of Succession dated 13.05.2003 be declared as null and void and that the Sub-Registrar, Salcete, be directed to cancel the registration of deed in the records. It was also prayed that the Defendant no.3 be directed to hand over the

possession of the property to the Respondents. The Petitioners contested the suit by filing written statement.

4. The Respondent nos. 1 to 2(d) filed an application under Order 1 Rule 10 of Civil Procedure Code, 1908 (CPC) for joining parties. The said application was opposed by the Petitioners vide reply dated 26.08.2022.

5. The learned Civil Judge vide Order dated 07.10.2022 allowed the application by directing the Plaintiffs to carry out necessary amendments.

6. Learned Senior Advocate Mr. Usgaonkar appearing for the Petitioners submitted that the suit was filed by the Respondent nos. 1 and 2 against the brother-Petitioner no. 1 and three sisters including the third party purchasers. The fourth sister Mrs. Raquel was not impleaded as party defendant in the suit. The very fact that three sisters were made the party-defendants clearly show that the Respondent nos. 1 and 2 were fully aware and conscious of the fact that the sisters are required to be made parties to the suit. Thus, Respondent nos. 1 and 2 were aware that fourth sister Mrs. Raquel was also required to be added as party-defendant. The relief sought in the suit was of declaration and hence the fourth sister Mrs. Raquel was also required to be made party unless she had relinquished her

right in the assets of her parents. No explanation was given for not impleading Mrs. Raquel in the suit. The cause of action had arisen on 19.08.2017 which is evident from the pleadings in paragraph 19 of the plaint. Suit was filed on 24.11.2017. As per Article 58 of the Limitation Act, the limitation is three years from the date of knowledge of such suits. Although Order 1 Rule 10 sub rule (2) of CPC provides that a party can be added at any stage of the proceedings, it will always be subject to law of limitation. The application was preferred belatedly. It ought not to have been allowed by the Court and the reliefs against the parties sought to be added would be barred by limitation as the limitation period had expired on 19.08.2020. There was no application for condonation of delay. The impugned Order is silent about condonation of delay. It is contrary to law. Hence, the Order deserves to be set aside.

7. Learned Senior Advocate Mr. Usgaonkar has relied upon the following decisions :

(i) **Ragho Singh vs. Mohan Singh & Ors.
vs. Mohan Singh & Ors.**¹

(ii) **Equitable Trust Co. & Ors. vs. Hafiz
Mohammad Halim & Co.**²

¹ (2001) 9 SCC 717

² AIR 1928 Allahabad 97

(iii) **K. Venkateswara Rao & anr. vs. Bekkam Narasimha Reddy & Ors.**³

(iv) **Kanakarathanammal vs. V. S. Loganatha Mudaliar & anr.**⁴

(v) **Alkapuri Cooperative Housing Society Limited vs. Jayantibhai Naginbhai (Dec.) Thr. LRS.**⁵

(vi) **Smt. Jaya & Ors. vs. Sri K. Gopala Raju & Ors. [WP Nos. 83083311/2015 & 8312-8314/2015 (GM-CPC) of Karnataka, Bengaluru High Court] decided on 11.03.2015.**

(vii) **Kaliammal vs. Karuppan & 2 Ors.**⁶

(viii) **Vasant Permanand Muley vs. Aurangabad Municipal Council & Ors.**⁷

(ix) **Golesh Kumar vs. Ganesh Dass Chawla Charitable Trust (Regd.).**⁸

(x) **Kisan Co-operative Sugar Factory Ltd. vs. M/s. Rajendra Paper Mills & Ors.**⁹

(xi) **F. Liansanga & anr. vs. Union of India & Ors.**¹⁰

3 AIR 1969 SC 872

4 (1964) 6 SCR 1

5 (2009) 3 SCC 467

6 2001 (2) CTC 601

7 2009 (4) Mh.L.J. 771

8 2006 (89) DRJ 417 (DB)

9 AIR 1984 Allahabad 143

10 Special Leave Petition (Civil) No. 32875-32876/2018 decided on 02.03.2022

8. Learned Advocate Mr. James Lopes appearing for the Respondents submitted that there is no infirmity in the impugned Order. The defendants have themselves raised the objection of non-joinder of necessary parties by giving names and address of the persons who are to be added as parties. It is upon such objection raised by them that the plaintiffs sought to bring on record the proposed parties. The defendants cannot be allowed to object the application for impleading the necessary parties. It is not the case of the Petitioners that the parties sought to be added were not necessary parties. The parties to the Sale Deed are required to be heard in the matter. The plaintiffs have sufficiently explained the delay.

9. Learned Advocate Mr. Lopes has relied upon the following decisions :

(i) Perumon Bhagvathy Devaswom vs. Bhargavi Amma (Dead) by LRs. & Ors.¹¹

(ii) Sesh Nath Singh & Ors. vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Ors.¹²

10. The suit was filed by Respondent nos. 1 and 2 before the Court of Civil Judge, Senior Division at Margao, viz Regular Civil Suit no. 285/2017/G for declaration under Section 34 of the Specific Relief Act. The Petitioners were Defendant nos. 1 and 2 in the suit. The

¹¹ (2008) 8 SCC 321

¹² (2021) 7 SCC 313

Plaintiffs claim that the suit property was originally owned by Antonio Joaquim D'Sa. He was married to Micaela Martins. The Plaintiff no.1 was the daughter of Antonio D'Sa and Micaela Martins. Plaintiff No.1 was married to Plaintiff No.2. Antonio D'Sa and Micaela Martins expired on 04.02.1988 and 03.07.1958 leaving behind Plaintiff and Defendant nos. 1, 2, and 4 to 15 as legal heirs. The Defendant no.1 had drawn a Deed of Succession dated 13.05.2003 declaring that the Defendant no. 1 married to Defendant no.2 as the sole heir of Antonio D'Sa and Micaela Martins. The Defendant nos. 1 and 2 executed Sale Deed dated 23.07.2007 and sold the property to Defendant no.3 claiming to be sole and exclusive owner of the property for having inherited the same upon death of Antonio and Micaela. The Plaintiffs' claim that Deed of Succession and Deed of Sale were fraudulent. Besides, Defendant nos. 1 and 2, they were the legal heirs of deceased Antonio and Micaela who were entitled to inherit their estate. The Plaintiff no. 1 had filed Inventory Proceedings in the Court of Adhoc Senior Civil Judge at Margao, upon death of Antonio and Micaela. The said proceedings are pending. The Plaintiff no.1 was appointed as Cabeça de Casal/Head of Family and she gave her statement on oath on 07.08.2009 and thereafter on 07.02.2015 and names of all the legal heirs were disclosed. Notices were issued to all the interested parties. The Plaintiff no.1 filed list of assets. The Plaintiffs and Defendant nos. 4

to 15 were in possession, occupation and enjoyment of the suit property. The Plaintiffs sought declaration that the Deed of Sale dated 23.07.2007 and Deed of Succession dated 13.05.2003 be declared as null and void and the Defendant no.3 be directed to hand over the clear, clean and vacant possession to the Plaintiff and other Defendants.

11. Written statement was filed by Defendant nos. 1 and 2. In the written statement it was denied that Defendant nos. 1 and 2 and 4 to 15 are only legal surviving heirs of late Antonio D'Sa and Micaela Martins. The Plaintiffs have deliberately omitted to mention the name of late Raquel de Sa who was the daughter of late Antonio D'Sa and was married to late Eutimo Fernandes. Late Raquel had expired on 17.04.1986. Late Raquel and late Eutimo had five children, whose names were provided in the written statement.

12. The Respondents filed an application under Order 1 Rule 10 of the Civil Procedure Code for joining parties and contended that the Defendant nos. 1, 2 and 3 have filed written statement and alleged that suit is bad for non joinder of necessary parties. The suit is at the stage of Plaintiffs' evidence. Upon filing suit, the Plaintiff no.2 fell sick and was confined to house due to old age and suffering from paralytic stroke and, therefore, could not verify the names of legal heirs of late Mrs. Raquel D'Sa and Mr. Eutimo Fernandes and the

relations of Plaintiffs with them was not correct and was not aware of the names of the legal heirs and, as such, they remained to be joined as parties in the suit. Plaintiff no. 2 had expired on 02.10.2019. Legal heirs of Plaintiff no. 2 were brought on record. Thereafter there was pandemic Covid-19 and hence the Plaintiffs could not contact their Advocate to take necessary steps and the application for joining legal heirs of deceased Mrs. Raquel D'Sa and late Eutimo had remained to be filed. To avoid multiplicity of litigation and since the suit is for declaration, the Plaintiffs desire to add the persons name in the application who are the legal heirs of the deceased Mrs. Raquel and Mr. Eutimo. The legal heirs may be permitted to be added as Defendants. The details of proposed Defendant nos. 4 to 15 were provided.

13. The Petitioners opposed the said application by filing reply and it was contended that the Plaintiffs were aware that these parties were necessary for the adjudication of the suit even at the time of filing the suit as they had already made the other sister of the Plaintiff as party to the suit and there was no reason to exclude his sister and his descendants. The application is subject to law of limitation. There is no genuine ground made out to condone delay. The suit is at the stage of plaintiffs' evidence.

14. The learned Civil Judge allowed the application by permitting the Respondent nos. 1 and 2 to carry out the necessary amendments.

15. It is pertinent to note that the application was preferred under Order 1 Rule 10 of Civil Procedure Code. It is not disputed that the proposed Defendants were necessary parties. In the written statement filed by the Petitioners, a grievance was made that legal heirs of Antonio and Eutimo were not added as parties in the suit. In the application preferred by the Respondent nos. 1 and 2 itself, the reasons were assigned for not preferring such application at the earliest. I do not find any infirmity in the impugned Order dated 07.10.2022. The parties to the Sale Deed are required to be heard. In the light of relief sought in the suit, the proposed Defendants were necessary parties and to avoid multiplicity of the proceedings, the proposed Defendants were rightly permitted to be added as Defendants. Assuming that there was no separate application, in the light of the explanation provided in the application preferred by the Respondent nos. 1 and 2 and the nature of relief sought in the said application the impugned Order need not be set aside on that ground.

16. In the case of **Ragho Singh vs. Mohan Singh & Ors. vs. Mohan Singh & Ors.** (supra), it was observed that the appeal was filed before the Additional Collector beyond the limitation prescribed by law. The application under Section 5 of the Limitation Act was not

filed for condonation of delay and the appeal was liable to be dismissed on the ground of limitation. The decision was delivered in the facts of the case. The appeal was required to be filed within the limitation prescribed by law.

17. In the case of **Equitable Trust Co. & Ors. vs. Hafiz Mohammad Halim & Co.** (supra), it was observed that it is not desirable to add or substitute parties to an action persons whose right to sue has already become time barred.

18. In the case of **K. Venkateswara Rao & anr. vs. Bekkam Narasimha Reddy & Ors.** (supra), it was observed that the amendments to a petition in civil proceeding and the addition of parties to such a proceeding are generally possible subject to the law of limitation.

19. In the case of **Kanakarathanammal vs. V. S. Loganatha Mudaliar & anr.** (supra), the claim of the appellant was rejected on the ground that she failed to implead her two brothers to her suit though on merits it was found that the property claimed by the appellant belonged to her mother and she is one of the heir on whom the property devolves by succession.

20. In the case of **Alkapuri Cooperative Housing Society Limited vs. Jayantibhai Naginbhai (Dec.) Thr. LRS.** (supra), it is observed that it is neither in doubt nor in dispute that the court's jurisdiction to consider an application for amendment of pleading is wide in nature, but by reason of an amendment, a third party is sought to be impleaded not only the provisions of Order 6 Rule 17 of Civil Procedure Code but also the provisions of Order 1 Rule 10 of Civil Procedure Code would come into play. When a new party is sought to be added, keeping in view the provisions of Order 1 Rule 10(5) of Civil Procedure Code, the question of invoking the period of limitation would come in.

21. In the case of **Smt. Jaya & Ors. vs. Sri K. Gopala Raju & Ors.** (supra), delivered in Writ Petition no. 8308-3311 of 2015 and other connected matters, the Karnataka High Court has observed that in view of Order 1 Rule 10(2) of Civil Procedure Code, the application is to be made at any stage or time before the conclusion or before the pronouncement of the Order, does not mean that such application could be filed even after it is barred by limitation. In the said case, the application was filed after a period of 12 years for impleading the necessary parties.

22. In the case of **Kaliammal vs. Karuppan & 2 Ors.** (supra), the High Court of Madras had observed that by virtue of provisions of

sub-rule (5) of Rule 10, Order 1 of the Civil Procedure Code subject to the provisions of Limitation Act, the proceedings against any person added as defendant are deemed to have commenced on the service of summons on him. The object of Order 1, Rule 10(2) of Civil Procedure Code is to bring about before the Court at the same time all the persons who are parties to dispute relating to the subject matter so that the dispute may be determined at the same time without any delay or inconvenience and expenses of separate actions and trials. By reason of such a power, the Court places itself in a position of being able to effectually and completely adjudicate upon and settle all the questions involved in the suit. However, this provision is subject to the other provisions of Section 21 of the Limitation Act.

23. In the case of **Vasant Permanand Muley vs. Aurangabad Municipal Council & Ors.**(supra), it was observed that the appellant must be deemed to know that the suit suffered from non-joinder of necessary party. In the absence of the party, no effective decree could be passed.

24. In the case of **Golesh Kumar vs. Ganesh Dass Chawla Charitable Trust (Regd.)** (supra), Delhi High Court had observed that the suit was rightly dismissed by the trial Court on account of non joinder of necessary parties. The objection was taken by the defendants about maintainability of the suit in the written statement

filed by them. Despite such warning, the plaintiff did not take any steps to amend the plaint though the suit remained pending for five years before the trial Court. In accordance with Order 31 Rule 2, it was necessary for the plaintiff to implead all the parties as defendants which he failed to do so despite a specific objection.

25. In the case of **F. Liansanga & anr. vs. Union of India & Ors.** (supra), the Supreme Court had observed that limitation may harshly effect in a particular way but it must be applied to all its rigor when the statute so prescribes.

26. In the case of **Kisan Co-operative Sugar Factory Ltd. vs. M/s. Rajendra Paper Mills & Ors.** (supra), it was observed that amendment to add new party against whom limitation had already run out, should not be allowed unless there are special considerations.

27. In the case of **Perumon Bhagvathy Devaswom vs. Bhargavi Amma (Dead) by LRs. & Ors.** (supra), the Apex Court had observed that the words “sufficient cause for not making the application within the period of limitation”, should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case and the type of case. The word “sufficient cause” in Section 5 of Limitation Act,

should receive a liberal construction so as to advance substantial justice, when the delay is not on account of dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant. In considering the reasons for condonation of delay, the Courts are more liberal with reference to applications for setting aside abatement, than other cases. The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

28. In the case of **Sesh Nath Singh & Ors. vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Ors.** (supra), the Supreme Court had observed that in any case, Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing 'sufficient cause'. Delay could be condoned irrespective whether there was any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay.

29. The application was preferred by the Respondent nos. 1 and 2 under Order 1 Rule 10 of Civil Procedure Code. On 22.07.2022, written statements were filed by the Petitioners/Defendant nos. 1 and 2. Raised objections about non joinder of parties. The written

statement was filed on 14.03.2018. Although the application for amendment was preferred much after the written statement, the Defendant nos. 1 and 2 have provided the explanation for belatedly filing the application. The proposed defendants are undisputedly necessary parties. The suit could not have proceeded without impleading them as parties. Multiplicity of proceedings could be avoided. The suit was at the stage of evidence of plaintiff. No prejudice would be caused to the Defendant nos. 1 and 2 by allowing the said application. The learned Civil Judge has assigned reasons for allowing the application.

30. Taking into consideration all these circumstances, no interference is warranted in the impugned Order. Petition is required to be dismissed.

ORDER

(i) Writ Petition No. 235 of 2023 is dismissed and disposed of.

PRAKASH D. NAIK, J

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