

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

**MISC. CIVIL APPLICATION NO. 269 OF 2023
IN
CIVIL REVISION APPLICATION NO. 8 OF 2016**

JOAO FERNANDES (SINCE
DECEASED) ... APPLICANTS

Versus

RATNABAI RAIKAR
(DELETED SINCE DECEASED)
& 18 OTHERS ... RESPONDENTS

Mr. Parikshit Sawant, Advocate for the Applicants.

Mr. Shivam Fadte, Advocate for Respondent Nos. 2 to 5.

Mr. Ajay Menon, Advocate h/f Mr. Parag Rao, Advocate for
Respondent No. 7.

CORAM: B.P. DESHPANDE, J.

DATED: 10th AUGUST 2023

ORAL ORDER:

1. Heard Mr. Sawant, learned Counsel appearing for the Applicants.

2. This is an Application for recall of the order dated 09.01.2023 passed in Civil Revision Application No. 8 of 2016.

3. First of all, the Application is not signed, verified and affirmed by the parties concerned, who are praying for recall of the said order.

4. Mr. Sawant, who signed the Application is an Advocate. He filed an Affidavit stating that whatever is stated in the Application is true to his personal knowledge.

5. The record of Civil Revision Application No. 8 of 2016 shows that the present Applicants being the legal representatives of deceased Respondent No. 1 were duly served by way of publication. In spite of service, they remained absent.

6. Mr. Sawant submits that the parties have signed the Vakalatnama and handed over it to him, which he failed to file in this Court. The concerned parties who claim to have signed the Vakalatnama did not say so on affidavit. Since there was no appearance on the part of the present Applicants being the legal heirs of Respondent No. 1, the matter was decided by this Court vide order dated 09.01.2023.

7. Mr. Sawant submits that it was the fault of the Advocate, who did not appear in the present matter and therefore, the

parties should not suffer. In this regard, he placed reliance on the following decisions of the Hon'ble Apex Court:-

- (i) **Savithri Amma Seethamma Vs. Aratha Karthy & Others**, (1983) 1 SCC 401 and
- (ii) **Secretary, Department of Horticulture Vs. Raghu Raj**, (2008) 13 SCC 395.

8. There is no quarrel with regard to such proposition, however, for this purpose, the parties must affirm the pleadings by saying on affidavit that the parties signed the Vakalatnama and appointed an Advocate. Similarly, the pleadings in the present Application and more specifically, pleadings made in paragraph 4 of the Application are completely vague as no date is mentioned as to when the Applicants approached their Advocate and handed over the Vakalatnama.

9. In such circumstances, the Application itself is not maintainable and stands dismissed.

B.P. DESHPANDE, J.