

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.78/2022

RAGHUVIR DATTARAM BHISE ... PETITIONER

Versus

**LINETE MATILDINHA
MARTINS AND 9 ORS. ... RESPONDENTS**

Mr Gajendra Usgaonkar, Advocate *for the Petitioner.*

Mr P. Rao with Mr Akhil Parrikar, Advocates *for Respondents No.1 & 2.*

Ms Sulekha Kamat, Additional Government Advocate *for Respondents No.3 & 4.*

CORAM: M. S. SONAK, J.

DATED: 19th August 2023

P.C.:

1. Heard Mr Gajendra Usgaonkar for the petitioner, Mr Parag Rao for respondents no.1 and 2 and Ms Sulekha Kamat, learned Additional Government Advocate for the State.

2. The challenge in this petition is to the order dated 31.03.2021 by which the learned Trial Judge permitted respondents no.1 and 2 (original plaintiffs) to withdraw the suit with liberty to file a fresh suit after curing technical defects, if they so desire.

3. Mr Usgaonkar submits that no formal defect in the suit was disclosed by the original plaintiffs. He submits that the so-called defect in the context of Section 106 of the Land Revenue Code was already cured by deleting defendant no.2 and deleting prayer clause (b). He submits that the suit for declaration was always maintainable against the Government and therefore, while leave could have been granted to unconditionally withdraw the suit, there was no question of grant of any liberty. Mr Usgaonkar relies on *K. S. Bhupati v/s. Kokila & Ors. - 2000 (5) SCC 458* in support of his contention.

4. On consideration of Mr Usgaonkar's submissions and perusing the material on record, no case for interference is made out because the order made by the learned Trial Judge does not suffer from any jurisdictional error.

5. The Trial Court has held that the suit indeed had technical defects and therefore liberty could be granted to institute a fresh suit on the same cause of action after withdrawing the present suit.

6. The application seeking withdrawal with liberty had clearly pointed out that the suit in its present form would not be maintainable given the judgments of the Bombay High Court on the subject. Accordingly, an application was made seeking leave to withdraw the suit with liberty to file a fresh suit on the same cause of action, no doubt, after avoiding the same technical defects. This is the aspect which has been considered by the

learned Trial Judge and there is no jurisdictional error in the approach adopted. The facts in the case of *K. S. Bhupati (supra)* were quite different because there, leave was granted only on the premise that no prejudice would occasion to the defendants. This is not a case where leave is granted only because there may be no prejudice to the defendants.

7. Besides, this petition is instituted by one of the defendants in the suit who had got himself impleaded. The suit was mainly against the Government and Governmental authorities. The Government and Governmental authorities have not bothered to challenge the impugned order and in fact, they have accepted the same.

8. Considering the above circumstances, no case is made out to exercise extraordinary jurisdiction under Article 227 of the Constitution of India and interfere with the impugned order. Accordingly, this petition is dismissed but without any order for costs.

M. S. SONAK, J.