

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 454 OF 2019

Shri Mohammad Rafik Shaikh,
S/o Late Shri Abdul Cadar Xeque,
Aged about 47 years,
R/o H.No.9/151(6),
Behind Vinod Printing Press,
Patrong Baina.
Vasco da Gama, Goa.

... Petitioner

Versus

1 Shri Mossim Shaikh,
S/o Ismail Sheikh,
Major in age,
R/o H.No.B-14,
Nevson Building,
Near Mother of Mercy School,
Vaddem, Vasco da Gama, Goa.

2 Shri Sheikh Abdul Samad,
Major in age,
R/o H.No.B-14,
Nevson Building,
Near Mother of Mercy School,
Vaddem, Vasco da Gama, Goa.

3 Shri Sheikh Abdul Hamid,
Major in age,
R/o H.No.B-14,
Nevson Building,
Near Mother of Mercy School,
Vaddem, Vasco da Gama, Goa.

4 Mrs. Farida Bi Shaikh
D/o late Ismail Sheikh,
Aged 42 years, Housewife,
R/o Flat No.31-12, B-1,
Karma Residential Enclave, Vaddem,
Vasco-da-Gama, Goa. ... Respondents

Mr J. A. Lobo and Mr. V. Naik, Advocates for the Petitioner.

CORAM: M. S. SONAK, J.

DATED : 2nd MARCH 2023

ORAL JUDGMENT

1. Heard Mr J. A. Lobo, learned counsel for the Petitioner.
2. Mr Lobo points out that the Respondents have been served, but today, there is no appearance on behalf of the Respondents. Mr. Lobo points out that on 31.07.2019, Respondent No.1 was personally present and had sought time to engage an Advocate. This is reflected in the order dated 31.07.2019. The office endorsement shows that no Vakalatnama was filed by any Advocate on behalf of Respondent No.1.
3. By order dated 19.06.2019, this Court had issued notice to the Respondents for final disposal. Accordingly, the petition is taken up for final disposal.

4. Rule. The rule is made returnable forthwith.

5. The Petitioner is the plaintiff in Regular Civil Suit No.25/2018/B. In this suit, the Petitioner had applied for relief of injunction to restrain Respondent Nos. 1, 2, and 3 from interfering with the suit house.

6. Respondent No.4, the estranged wife of the Petitioner, filed an application seeking intervention/impleadment (Exhibit D-9). In this application, Respondent No.4 claimed to be in possession of the suit house. Further, it was under her authorization that Respondent Nos. 1, 2, and 3 had a right to come into the suit house. The Petitioner does not accept this position.

7. The trial Court, by the impugned order dated 28.02.2019, has allowed this application by giving the following reasons:-

"REASONS

5. Order 1 Rule 10(2) of CPC provides for the adding of the parties in the suit. In the instant case it is admittedly that the possession of the suit premises is with the intervener and hence the intervener is the proper and necessary party to be joined in the instant suit.

6. No prejudice will be caused to the plaintiff if the Intervener is allowed to be added as Defendant No.3.

7. Moreover, without the intervener being added as part to the present proceedings the matter cannot be adjudicated in true sense as the possession is with the intervener in the instant case.

8. In view of above and in the interest, I am inclined to pass the following:"

8. Mr Lobo, learned counsel for the Petitioner, submits that the Petitioner is the plaintiff, is *dominus litis*. He submits that Respondent No.4 is neither necessary nor a proper party, and the Petitioner cannot be forced to implead Respondent No.4. He submits that the contention about the Respondent No.4 being in possession of the suit house is incorrect. He submits that the Petitioner only has a grievance against Respondent Nos. 1, 2, and 3. He submits that nothing in the suit will apply to Respondent No.4. He submits that if Respondent No.4 has any grievance or cause of action against the Petitioner, then it is for her to take out independent proceedings but not insist upon the intervention or modification in this suit which is for permanent injunction simpliciter. He relies on ***Sudhamayee Pattnaik and others Vs Bibhu Prasad Sahoo and others*¹**.

9. Having considered Mr Lobo's submissions and perused the material on record, I agree with Mr Lobo that Respondent No.4's application for intervention/modification should not have been allowed. Reasons for this are indicated hereafter.

10. As noted earlier, the Petitioner's suit is for injunction simpliciter against Respondent Nos. 1, 2, and 3. Therefore, these Respondents must take appropriate defences as may be available in facts and in law. It is open to them to contend that Respondent No.4 is in possession of the suit house and that they are entitled to enter the suit house under her authorization. They may be entitled to call Respondent No.4 as a witness in the proceedings if they so desire.

11. However, Respondent No.4 does not appear to be either a necessary or proper party in the suit as instituted. In so far as the claims of Respondent No.4 are concerned, she is at liberty to agitate the same independently. At this stage, it is not for this Court to go into the issue of whether she is really in possession of the suit house or not. Moreover, the suit instituted by the Petitioner is only against Respondent Nos. 1, 2, and 3. Therefore, any decision in this suit will obviously not bind or affect the rights, if any, of Respondent No.4 now that the Petitioner is resisting her impleadment in this suit.

12. In *Sudhamayee Pattnaik* (supra), the Hon'ble Supreme Court has held that it is a settled position of law that the plaintiffs are the dominus litis. Therefore, unless the Court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not

impleading any other person as defendant against the wish of the plaintiffs shall be at the risk of the plaintiffs.

13. Therefore, considering the above position, the impugned order dated 28.02.2019 is set aside, and Exhibit D-9 filed by Respondent No.4 is dismissed. The dismissal shall be without prejudice to the rights, if any, of the Respondent No.4 to independently agitate her claims of possession qua the suit house or her grievances qua the Petitioner.

14. Since further proceeding in the said suit were stayed, the interim order is now vacated. The Petitioner is to appear before the trial Court on 27.03.2023 at 2.30 p.m. and file an authenticated copy of this order. If the Respondents do not appear on this date, the trial Court should issue them a notice fixing a suitable date for their appearance.

15. The Petitioner should also supply an authenticated copy of this order to the Advocate appearing on behalf of the Respondents before the trial Court within two weeks from today.

16. The rule is made absolute in the above terms. There shall be no order for costs.

M. S. SONAK, J.