

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.765 OF 2023

1 Mrs. Maya Regunath Kalokhe,
Alias Maya Ragunath Nadkarni,
Wife of Mr. Manoj P. Nadkarni,
45 years of age,
R/o. Flat No.F-2, B- Block,
Buildmorewoods, Mapusa, Goa.

2 Mr. Manoj P. Nadkarni,
Son of late Prabhakar Nadkarni,
49 years of age, Advocate,
R/o. Flat No.F-2, B-Block,
Buildmorewoods, Mapusa, Goa.

... Petitioners

Versus

1 M/s. Renderwood Hospitality Pvt. Ltd.
A Private Limited Company
incorporated under the Companies Act
1956, by its Director and Authorized
Signatory, Mr. Sachin Vishwanath Naik,
son of Mr. Vishwanath Naik, aged 36
years, businessman, married, Indian
National, resident of H.No.503,
Junaswaddo, Mandrem, Pernem-Goa –
403527, having its Corporate Office,
S.V. Road, Dahisar East, Mumbai –
400068.

2 Mr Sitaram Alias Sandeep Dattaram
Kalokhe,
Son of late Dattaram Kalokhe,

Aged 45 years, married, service, Indian National and R/o. H.No.268, Manshebhat, Hali wada, Britona, Penha de Franca, Bardez-Goa 403501.

- 3 Mrs. Sharada Sitaram Kalokhe,
Wife of Mr. Sitaram alias Sandeep Kalokhe,
Aged 43 years, married, housewife, Indian National and
R/o H. No. 268, Manshebhat, Hali wada, Britona, Penha de Franca, Bardez-Goa 403501.

- 4 Smt. Jaya Sadashiv Gaitonde,
Wife of Shri. Sadashiv Gaitonde,
Aged 40 years, married, housewife, Indian National,
R/o Flower Green Apartments, D-Wing-12 Society, Vera Desai Road, Andheri West, Mumbai.

- 5 Shri. Sadashiv Gaitonde,
Son of Mr. Prakash Gaitonde,
Aged 45 years, married, service, Indian National and
R/o Flower Green Apartments, D-Wing-12 Society, Vera Desai Road, Andheri West, Mumbai.

...Respondents

Mr.A.D. Bhobe, Advocate for the petitioners.

Mr. Pankaj Pai Vernekar, Advocate for respondent No.1.

Respondent No.2 present in person.

CORAM: BHARAT P. DESHPANDE, J.

DATE: 12th December, 2023

ORAL JUDGMENT:

1. Heard Mr. A.D. Bhobe, learned Counsel for the petitioners and Mr. Pankaj Pai Vernekar, learned Counsel for respondent No.1. Respondent No.2 is present in person. Service on respondents No.4 and 5 though awaited, Mr. Bhobe submits that the said respondents are not actually the contesting parties as the application filed for intervention was between the petitioners and respondent No.1/plaintiff.
2. The learned Counsel for respondent No.1 /plaintiff filed a reply affidavit wherein the order of the Apex Court is annexed dated 08/12/2023. In the said order though the Apex Court did not interfere with the order dated 07/11/2023 passed by this Court, directed this Court to decide/dispose of the petition on the date listed and/or to decide the application for interim stay.
3. The learned Counsel for the respective parties submits that since the matter is between petitioners and respondent No.1, the same could be disposed of finally at this stage.
4. Rule. Rule is made returnable forthwith.

5. Heard learned Counsel for the respective parties at the stage of admission itself.

6. The short question involved in the present petition is the rejection of the application filed by the petitioners under Order 1 Rule 10 CPC for impeding them in the civil suit filed by respondent No.1 for partition and separate possession.

7. Mr. Bhobe appearing for the petitioners would submit that the petitioners are necessary parties to decide the suit since the Gift Deed by which the plaintiff/respondent No.1 is claiming right over the suit property, was itself executed without proper powers given to the Power of Attorney and therefore, the petitioners are still having rights in the suit property. He submits that the application was filed only to implead the petitioners as party defendants so as to protect their rights over the suit property or their share in the suit property. He submits that only after impleading the petitioners as party defendants, their interest, if any, in the suit could be pleaded by filing a written statement.

8. Mr. Bhobe would submit that at this stage i.e. at the time of impleadment, the question of limitation in connection with challenging the Gift Deed cannot be looked into. He submits that it is the case of the petitioners that there was fraud while executing the Gift Deed and thus such a plea can be raised at any stage and in proceedings involving the suit property. He further submits that the respondent No.1/plaintiff by filing the suit for partition is trying to claim exclusive possession over the property allegedly purchased by it from different shareholders/legal heirs of the original owner.

9. Mr. Bhobe submits that the learned trial Court completely lost sight and failed to consider basic concept of Order 1 Rule 10 CPC and therefore order needs interference.

10. *Per contra*, Mr. Vernekar, learned Counsel for respondent No.1/plaintiff would submit that the petitioners are neither necessary nor proper parties to the clause which has been raised in the suit by the plaintiff. He submits that petitioners, by trying to implead themselves, are trying to enlarge/change the nature of the suit itself. He submits that the Gift Deed was executed somewhere in the year 2007 and till date the same has not been challenged in proper proceedings. The

petitioners are now trying to raise such an issue by a backdoor entry and that too in a suit filed by respondent No.1 only for partition. He further submits that the Gift Deed was in favour of one Rataboli from whom the plaintiffs had purchased around 96.40% share in the suit property. The said Rataboli is not a party to the present suit and thus the petitioners cannot be claimed a proper or necessary parties in the suit.

11. Mr. Bhobe in rejoinder submits that once the petitioners are joined in the suit, their right to file a written statement and raise issues in connection with the suit property would be governed by Order 8 Rule 15 (Bombay Amendment) of CPC.

12. Rival contentions fall for determination.

13. Respondent No.1 filed a suit which is titled as suit for partition under Sections 2 and 3 of the Partition Act r/w. Order 20 Rule 18 (2) of the Code of Civil Procedure. In the suit, the plaintiff has claimed that he purchased 96.40% undivided right in the suit property from one Mr. Rataboli. The said Mr. Rataboli in turn becomes owner of the said

property on the basis of the Gift Deed executed by the co-owners. One of such Gift Deed was executed by the petitioners in the year 2007.

14. The prayer in the suit is for a preliminary decree of partition/division along with other reliefs. Admittedly, the suit is filed against the remaining co-owners i.e. present respondents No.2 to 5. The learned Counsel for respondent No.1 submits that they have already arrived at settlement with respondents No.2 and 3 who are the original defendants No.1 and 2, though such defendants filed a counterclaim. He therefore submits that the matter is now pending against only defendant Nos.3 and 4.

15. The application filed by the petitioners is under Order 1 Rule 10 CPC wherein it is the contention of the petitioners that she is the daughter of late Raghunath Sitaram Kalokhe and late Janaki. Late Raghunath was recorded as owner of Survey No.272/3 which is one of the subject matter of the suit. The intervenors/petitioners found that some of the co-owners/ family members signed some consent terms in Special Civil Suit No.18 of 2011, and gained knowledge with regard to consent terms filed in Special Civil Suit No.55 of 2018. Accordingly, the application was filed in Special Civil Suit No.55 of 2018 for

inspection of the file and at that time the petitioners noticed that the property belonging to the late Raghunath and his wife Janaki were gifted to Mr. Rataboli. It is their contention that the Gift Deed or such transaction is a fraudulent transfer and that the petitioners are still have rights and interest in the suit property. It is therefore their contention that they are necessary and proper parties in the suit.

16. Respondent No.1/plaintiff resisted such application by filing a reply wherein it is claimed that the petitioners are neither necessary nor proper parties and that they are trying to agitate the so called claim of fraudulent Deed after a period of around 15 years. It is further claimed that the issue involved in the suit is only regarding partition amongst the co-owners and therefore such application needs to be rejected.

17. Even trial Court while dismissing the application, observed in its impugned order the submissions advanced by the respective parties. In paragraph 10 the learned trial Court observed that it is not in dispute that intervenor No.1 is a daughter of Raghunath and Janaki and that the suit property devolved upon Raghunath along with other heirs of the original owner. Thereafter the learned trial Court went

ahead and discussed even the arguments advanced by the parties and rejected the application.

18. First of all the purpose of Order 1 Rule 10 CPC is the power of the Court to strike off or add the parties to the suit on the premise that their presence before the Court is necessary in order to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit.

19. The impugned order though discusses the submissions advanced by the parties as to whether the intervenors are necessary or proper parties, there are absolutely no observations or findings of the trial Court as to whether the intervenors are either proper or necessary parties to decide the dispute effectively amongst the parties.

20. The findings of the trial Court effectively start from paragraph No.11 wherein the contentions of the plaintiff in the suit are found recorded along with the submissions. Similarly, paragraph 12 also deals with further contentions on behalf of the intervenor. The effective findings are only in paragraph No.13 wherein the learned trial Court considered arguments advanced by the learned Counsel for the

plaintiff that the intervenors can file separate suits with respect to their claim over the suit property and the Gift Deed of 2007. There are absolutely no discussions or findings in the entire order as to whether the intervenors are either proper or necessary parties to adjudicate effectively and settle all questions involved in the suit. Thus, it is apparent from the impugned order that the learned trial Court failed to consider the basic concept of Order 1 Rule 10 CPC or to give findings on this aspect.

21. The question of the right of the intervenor to file a separate suit cannot be the ground for rejection of such an application. One of the purposes of adding or substituting the party to the suit is also to prevent multiplicity of the proceedings and to decide all questions effectively and completely which are involved in the suit.

22. Learned Counsel for respondent No.1 placed reliance in the case of **Shalini Shyam Shetty and Another v/s. Rajendra Shankar Patil** [(2010) 8 SCC 329] and specifically paragraph 49 wherein the Hon'ble Apex Court has formulated the points/principles on which the High Court exercises jurisdiction under Article 227 of the Constitution of India.

23. One of the functions is to exercise powers of superintendence wherein the errors of jurisdiction committed by the trial Court could be corrected or interfered with.

24. The matter in hand clearly falls within the scope of the guidelines framed by the Apex Court in the case of **Shalini Shyam Shetty**(supra) as the learned trial Court without discussing the basic concept of Order 1 Rule 10 CPC, decided the application on extraneous grounds. At this stage, the only ground which the trial Court is bound to look into is whether the intervenor is either necessary or the proper party to adjudicate completely issues involved in the suit.

25. Since there is absolutely no discussion on this aspect, it is difficult for this Court to take up such a task at this level. The only option is to quash and set aside the impugned order and to remand the matter to the trial Court to decide the application afresh by giving opportunity to the parties and on the aspect as to whether the intervenor is either proper or necessary party to adjudicate the dispute effectively.

26. Accordingly, the only option is to remand the matter by quashing the impugned order.

27. The impugned order dated 17/03/2023 on Exhibit 51 is hereby quashed and set aside. The matter is remanded to the trial Court to decide such application afresh by giving opportunity to the parties to the proceedings. Needless to mention that such application shall be decided on its own merit and without being influenced by the observations made in the earlier order as well as in this order. Trial Court to decide such application preferably within a period of one month from 02/01/2024.

28. It is reported that the next date is fixed on 02/01/2024. The parties shall appear and argue the application at Exhibit 51 on that date or preferably within the shortest period so as to dispose of the same in accordance with the law.

29. Rule is made absolute in the above terms.

BHARAT P. DESHPANDE, J.