

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.544 OF 2022

Aldumira Almeida

...Petitioner

Versus

Custodio Fernandes And Anr.

... Respondents

Ms A. A. Agni, Senior Advocate with Ms Jay Sawaikar,
Advocate for the Petitioner.

Mr R. G. Ramani, Senior Advocate with Mr Sadanand
Chopdekar, Advocate for the Respondents.

CORAM: M. S. KARNIK, J.

DATED : 21st MARCH 2023

P.C.

1. Heard learned Senior Counsel Ms Agni, for the petitioner and Mr Ramani, learned Senior Counsel for the respondent no.2.

2. This petition challenges an order passed by the learned Civil Judge, Junior Division, 'E' Court at Margao-Goa, allowing an application made by respondent no.2 for exclusion of the counter-claim of the defendants in view of Order VIII Rule 6 (C) of the Civil Procedure Code, as the

State of Goa was not made party to the counter-claim. It was the contention of respondent no.2 that without making the State of Goa a party, the petitioner is seeking relief in the counter-claim in respect of demolition of an unauthorised construction which is made on Government land and also on the ground that subject matter of the counter-claim had nothing to do with the reliefs claimed in the suit.

3. Learned Senior Advocate for respondent no.2 does not seriously dispute the proposition that the issues raised in the counter-claim and the reliefs sought by the petitioner can be agitated by way of a counter-claim in the present form. The position is so stated by the Hon'ble Supreme Court in the case of *Sh. Jag Mohan Chawla & Anr v/s. Dera Radha Swami Satsang & Ors*¹.

4. So far as impleadment of the State of Goa as a party defendant to the counter-claim is concerned, learned Senior Advocate submits that appropriate steps will be taken to implead the State of Goa as a party defendant to the counter-claim. Necessary amendment to that effect to be carried out by the petitioner to the counter-claim impleading the State of Goa, within ~~one week~~ ^{two weeks} from today.

Corrected as
Per Order dated
29.03.2023

5. Shri Ramani submitted that even respondent no.2 has no qualms in impleading the State of Goa as party defendant in the suit that has been filed. The necessary amendment to be carried out within two weeks from today impleading the State of Goa.

6. In this view of the matter, after the amendment, the District Judge will be competent to hear the suit. Observations to that effect have already been made in the impugned order. The parties are at liberty to apply for such transfer after carrying out necessary amendment. In normal course, it is for the parties to apply for transferring the suit to the District Court for further hearing. However, considering that the parties are ad-idem as regards the competency of the District Judge, and as the trial Court has so observed in the impugned order, it would be in the interest of justice if the suit stands transferred to the District Judge pursuant to the amendment. The District Judge to hear the suit and the counter-claim on its own merits and in accordance with law. Formal orders of allotment may be passed by the learned Principal District Judge.

7. The District Court may consider the application for injunction made by the respondent no.2 on its own merits, expeditiously.

8. Subject to the above observations, the impugned order passed by the trial Court dated 11.10.2022 in Regular Civil Suit No.46/2018/E is set aside.

9. The writ petition is disposed of.

M. S. KARNIK, J

MARIA SUZANA
REBELLO

Digitally signed by MARIA SUZANA
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Date: 2023.03.31 14:45:25 +05'30'