

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 16 OF 2023

1. Mr. Ulhas Narayan Nagvenkar, 57 years of age, Indian National, son of late Narayan A. Nagvenkar, married

2. Sanjay Narayan Nagvenkar, 54 years of age, Indian National, son of Narayan A. Nagvenkar, married

3. Premanand Narayan Nagvenkar, 48 years of age, Indian National, son of Narayan A. Nagvenkar, married

4. Pravin Narayan Nagvenkar, 42 years of age, Indian National, son of Narayan A. Nagvenkar, married

5. Shanti Shirodkar, 56 years of age, daughter of Narayan A. Nagvenkar, married

6. Mrs. Laxmi Narayan Nagvenkar, wife of late Narayan A. Nagvenkar, age 70 years

All the above are residents of Khobra Waddo, Calangute, Bardez, Goa.

... APPLICANTS

Versus

1. Mrs. Mathilda Clara Josephine Belo alias Bello alias Mathilda Soares, wife of Constancio Soares, age 72 years, married, housewife, Indian National and her husband

2. Mr. Contancio Soares, son of late Vincent Soares, age 73 years, retired, through his lawful attorney, Mrs. Mathilda Clara Josephine Belo alias Bello alias Mathilda Soares,

Both residents of Room No. 6, 1st floor,
Madwin Chawl, Behind K.E.S. School,
Anand Colony, Kalina, Santa Cruz,
Mumbai.

... RESPONDENTS

Mr. Somnath B. Karpe with Mr. Anand Shirodkar and Mr.
Abhishek Sawant, Advocates for the Applicants.

Mr. Jagannath J. Mulgaonkar, Advocate for the
Respondents.

CORAM: B.P. DESHPANDE, J.

DATED: 7th SEPTEMBER 2023

ORAL JUDGMENT:

1. Admit.
2. Heard Mr. Karpe for the Applicants and Mr. Mulgaonkar
for the Respondents.
3. The present Revision is against the impugned order dated
04.12.2021, by which, the learned Trial Court rejected the
Application filed under Order VII Rule 11(a) and (d) of CPC.
4. Mr. Karpe while pointing out the pleadings in the plaint,
submitted that the impugned order needs interference as it does
not discuss whether cause of action in favour of the Plaintiffs
exists or it is only illusory on the basis of clever drafting. He

submits that Special Civil Suit No. 69 of 2007 filed by the Plaintiffs against the other co-owners for declaration of ownership on the ground of adverse possession, came to be dismissed on 02.01.2017. He, therefore, submits that the Plaintiffs do not have any right over the suit property and accordingly, the Plaintiffs are not having any cause of action.

5. Mr. Karpe would then submit that the suit as filed before the Trial Court is also barred by limitation for the simple reason that the Applicants/Defendants obtained a declaration of tenancy in the year 2009 itself, whereas the suit was filed in the year 2014. He submits that these aspects are not discussed by the learned Trial Court.

6. Mr. Mulgaonkar appearing for the Respondents claimed that the aspect of Section 58 of the Tenancy Act is settled by this Court in Second Appeal No. 64 of 2022 vide order dated 09.12.2022 in the case of **Ramchandra Halwai & Others Vs. Benedito Carvalho**.

7. Mr. Mulgaonkar would submit that the impugned order needs no interference as the Applicants have pointed out the subsequent events.

8. On perusal of the impugned order, it is clear that till paragraph 16, the learned Trial Court considered the submissions and then discussed case law. The remaining two paragraphs nowhere discuss the aspect of whether the plaint discloses cause of action and whether the suit is within limitation, as required to be considered in an Application filed under Order VII Rule 11 (a) and (d) of CPC. The reasoning in paragraphs 17 and 18 is wholly on different aspects.

9. Since the learned Trial Court failed to give reasons qua clauses (a) and (d) of Order VII Rule 11 of CPC, it is difficult to consider the contentions of both parties at this stage. The only option is to quash and set aside the impugned order thereby remanding the matter to the Trial Court to decide afresh the Application filed by the Defendants at Exhibit-26. Needless to mention that the said Application shall be decided as expeditiously as possible and within a period of two months.

10. In such circumstances, the following order is passed:

O R D E R

- (a) The Revision is therefore partly allowed.
- (b) The impugned order is quashed and set aside.
- (c) Application at Exhibit-26 is restored to the file of the learned Trial Court.

- (d) The said Application shall be decided afresh by giving an opportunity to both sides and within a period of two months.
- (e) All contentions of all parties with respect to such Application and Reply are kept open.
- (f) Parties shall appear before the Trial Court on 27.09.2023 at 10:00 a.m.
- (g) The Trial Court to take up the matter and decide the Application at Exhibit-26 within a period of two months thereafter.
- (h) Parties are hereby directed to co-operate with the Trial Court for disposal of such matter.

11. The Revision stands disposed of in the above terms.

B.P. DESHPANDE, J.