

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1049/2019

AUGUST TCEFILO SAUDE
NORONHA (DEC) REP. BY
HIS LRS.

... PETITIONERS

Versus

ANA CAITAN FERNANDES @
ANA CAITANA PEREIRA,
REP. BY HER ATTORNEY,
LOURDINA P. FERNANDES
AND 14 ORS.

... RESPONDENTS

Mr Nigel da Costa Frias with Mr B. Pacheco, Advocates
for the Petitioners.

CORAM: M. S. SONAK, J.

DATED: 22nd February 2023

P.C.:

1. Heard Mr Nigel Costa Frias for the petitioner.
2. This petition challenges the order at Exh.D-20 dated 30.08.2019 by which the Appeal Court has permitted Maria Fernandes, daughter of Carlito Fernandes and Ana Fernandes to intervene in Regular Civil Appeal No.77/2017/FTC-1. Maria is

represented by her next friend Mr Pedro Piedade Gama in the application seeking impleadment.

3. Mr Costa Frias, learned counsel for the petitioner submits that Maria was neither a necessary nor a proper party in the appeal. He submits that the suit was filed because Maria's mother Ana Fernandes was a trespasser in the suit premises. In the suit no impleadment was applied for and Maria's mother Ana Fernandes defended the suit without raising any issue of non-joinder of necessary parties. He therefore submits that the appeal court has committed a jurisdictional error in allowing Maria's impleadment and that too through a next friend who has no nexus whatsoever with the issues involved in the suit or the appeal.

4. The suit was indeed filed against Maria's mother Ana Fernandes alleging that she was a trespasser in respect of the suit premises. However, the appeal court had held that Caitan Fernandes's name appears in the survey record concerning the suit premises. Carlito Fernandes was not only the husband of Ana Fernandes but also the father of Maria. Thus construed, it cannot be said that Maria is a stranger to the proceedings or that she is not even a proper party. Ultimately, if the appeal is dismissed and the decree of the Trial Court is upheld, then, even Maria stands to

be evicted along with her mother Ana. Since Maria is said to be of unsound mind, application is filed through her next friend. Such next friend, need not have any nexus with the suit property. These are, no doubt, *prima facie* findings made at the stage of considering the application for impleadment. The petitioner will be entitled to argue that these observations are not correct or that the records indicate otherwise.

5. In any case, the impleadment is, to a certain extent, in the interest of the petitioner. If the petitioner succeeds in finally obtaining a decree for eviction of Ana Fernandes from the suit premises, it is possible that the execution of such decree is resisted by Maria on the ground that she too had an interest through Carlito and was not a party to the proceedings. The impleadment will contribute avoiding multiplicity of proceedings.

6. Thus construed, there is no jurisdictional error in the impugned order. Accordingly, this petition is dismissed by clarifying that all contentions of all parties including, the contentions of the petitioner that both Ana and Maria have no rights whatsoever in the suit property are specifically kept open.

7. With the above clarification, this petition is disposed of. There shall be no order for costs.

8. The interim order granted earlier is hereby vacated.

M. S. SONAK, J.