

shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.166 OF 2020
WITH
MISC.CIVIL APPLICATION NO.836 OF 2023 (F)**

WRIT PETITION NO.166 OF 2020

VEERAJU V., ... PETITIONER
Versus

GOVIND PANDURANG SINAI BATKULLY
(DEC) THR. LR. AJIT GOVIND
BHATKULY AND 20 ORS., ... RESPONDENTS

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BHATKULY AND 20 ORS., ... RESPONDENTS

Mr. Vivek Rodrigues, Advocate for the Petitioner.

Mr. Ramani, learned Senior Counsel along with Mr. Pranav
Kakodkar, Advocate for Respondent no.1(a)

Mr. V. Sardessai, learned Additional Government Advocate for
Respondent nos. 18 and 20.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 4th November, 2023

ORAL ORDER

Heard Mr. Rodrigues appearing for the Petitioner, Mr. Ramani,
learned senior Counsel along with Mr. Pranav Kakodkar, Advocate
for Respondent no.1 (a), Mr. V. Sardessai, learned Additional
Government Advocate for Respondent nos. 18 and 20.

2. The Petitioner challenges the impugned order dated 19.10.2019 passed in Civil Suit no.15/2018 whereby the said Civil Suit of 15 of 2018 is stayed by applying provisions of Section 10 of the Civil Procedure Code on the ground that Regular Civil Suit No.79/2012 is pending before the Senior Civil Judge, Mapusa, in connection with the same properties.

3. Learned Senior Counsel Shri Ramani would submit that such application filed before the Trial Court is itself not tenable, when there was no question of staying the Civil Suit no. 15/2018 filed by the Petitioner till the disposal of Regular Civil Suit No.79/2012 for the simple reason that the Petitioner is not a party, to Regular Civil Suit No.79/2012.

4. Mr. Rodrigues appearing for Petitioner challenged the impugned order on the ground that the learned Trial Court completely failed to consider the provisions of Section 10 of the Civil Procedure Code as the Petitioner who is the Plaintiff in Regular Civil Suit No.15/2018 is not even a party to Regular Civil Suit No.no. 79/2012.

5. A perusal of the plaint in both the suits would clearly show that the Petitioner who is the Plaintiff in Regular Civil Suit No..15/2018 is not even a party to the suit filed by husband of Respondent no. 6. bearing no. RCS/79/2012, though the properties in question are the

same.

6. The provision of Section 10 of the Civil Procedure Code for stay of the suit could be applied only when parties to suit are the same litigating under the same title. The purpose is to avoid multiplicity of proceedings between the same parties. In this matter the Petitioner is admittedly not a party to Regular Civil Suit No.79/2012 and his claim over the suit property is through a different owner.

7. The impugned order therefore needs to be quashed and set aside as the same is clearly without application of mind looking into provisions of Section 10 of C.P.C.

8. Mr. Ramani learned Senior Counsel would submit that in Regular Civil Suit No.15/2018, since some of the Government Departments are parties, the same is pending before the District Court Mapusa whereas Regular Civil Suit No.79/2012 is before the Civil Judge Senior Division, Mapusa. He suggests that Government Departments in RCS No.15/2018 are neither necessary nor proper parties and if such parties are deleted from the cause title, both suits could be tried by the same Court/Presiding Officer in order to avoid conflicting decision.

9. Mr. Rodrigues appearing for the Petitioner submits that he will take instructions from the Petitioner and if agreed, would delete the

Government Departments from the suit so as to decide the matters by same Court.

10. Even otherwise, the parties are at liberty to approach Principle District and Sessions Judge, North Goa, Panaji. A prayer to transfer both the suits to one Court in order to avoid conflicting decisions. If such recourse is adopted, the possibility of conflicting decision/order could be avoided. Besides this, if both the matters are taken up by the same Court, even common evidence would be led.

11. Parties are therefore directed to consider the above proposal and act accordingly.

12. Since the Impugned order is untenable, the same needs to be quashed and set aside. The petition is accordingly allowed in the above terms.

13. Since the Petitioner is a Senior Citizen, the Trial Court is requested to dispose of both the matters as expeditiously as possible. The Miscellaneous Civil Applications, stand disposed of accordingly.

BHARAT P. DESHPANDE, J.