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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 144 OF 2017

UMANATH NAIK & ANR., ... PETITIONERS
VS
REGISTRAR OF CO-OPERATIVE
SOCIETY & 4 ORS., ... RESPONDENTS

Mr Arjun Naik, Advocate for the Petitioners.

Mr R.G. Ramani, Senior Advocate with Mr Pranav Kakodkar,
Advocate for Respondent No. 2.

Mr Sudin Usgaonkar, Senior Advocate with Ms Pooja Naik,
Advocate for Respondent Nos. 3, 4 and 5.

**CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED: 26th APRIL 2023

ORAL ORDER:

1. Heard Mr Arjun Naik for the petitioners, Mr Ramani, learned Senior Advocate who appears along with Mr Kakodkar for respondent no. 2 and Mr Sudin Usgaonkar, learned Senior Advocate who appears along with Ms Pooja Naik for respondent nos. 3 to 5.

2. This Petition was instituted on 08.12.2016 and was entertained possibly because there was some dispute as to whether respondent no. 2 would answer the definition of State within the

meaning of Article 12 of the Constitution of India. Be that as it may, several orders were made to see if some amicable settlement was possible. Finally, an interim order was made directing the Bank to return the pledged gold ornaments to the petitioners subject to the petitioners depositing in this Court an amount of ₹1,60,000/-.

3. The petitioners deposited the amount of ₹1,60,000/- and accordingly, the gold ornaments were returned to the petitioners. The matter was, however, admitted because there was a dispute between the petitioners on one hand and respondent nos. 3 to 5 on the other, on the ownership of the gold ornaments.

4. The record shows that the petitioners had instituted a suit against respondent nos. 3 to 5 claiming ownership of this gold. The suit, appeal and the second appeal were dismissed only on the ground of limitation. However, all three Courts recorded a categorical finding that the petitioners were the owners of the gold ornaments and that respondent nos. 3 to 5 had no right or title to the same.

5. The Appeal Court in Regular Civil Appeal No. 39/2014 recorded the following findings in paragraphs 25 and 26 of the judgment and decree dated 10.10.2014:-

“25. It is also an admitted position that defendant no. 2, the Bank issued a receipt of deposit of gold ornaments with the Bank, and that plaintiffs have effected entire amount of loan of Rs. 45,000/- to defendant no. 2. It is also an admitted position that defendant no. 1 did not comply with the request of the plaintiff to write to defendant no. 2 to release the gold ornaments of plaintiff no. 2 even though plaintiff no. 1 had repaid the entire loan. In that context evidence of DW1, Smt. Vidya Naik is quite clear. In her evidence she has squarely admitted that since plaintiff no. 1 having repaid the loan the gold ornaments of plaintiff no. 2 same has to be returned to her by the Bank and further stated that they (defendants) have no right to the gold of the plaintiff no. 2 kept in the Bank. Entire case of the defendant is based on spacious plea that request of the plaintiff to help them in the financial crises to give consent for selling two plots of the land situated at Village Salvador de Mundo Taluka, Bardez, Goa so that plaintiffs could generate some money for their business purpose and that they have or acceded thereby giving their consent to sell the two plots by virtue of two sale deeds both dated 16.4.1999 and during the said transaction plaintiffs assured them that they would refund the said money (their share) within one year along with interest at the rate of 18% p.a. It is also the case of defendants that as a security towards the refund of the said amount plaintiffs agreed that original defendant and his wife could retain the gold ornaments belonging to plaintiff no. 2 deposited in the Bank at the time of availing loan. DW1 and DW2 in their defence evidence also deposed so. However, it is seen that pleadings of the defendants in that regard are vague in the sense

that defendants did not clarify what was the sale proceeds towards the said two plots and what was their share. There is also nothing in writing to that effect nor required pleadings in the written statement. Defendant no.1 also did not place on record the copy of the sale deed executed by plaintiffs and defendants in favour of the vendee. Suggestion put to plaintiff no. 1 in that regard were refuted by DW1 that there was any agreement between the plaintiffs and defendants regarding the sale transaction or that gold ornaments were kept with defendant no. 2 as security towards the said repayment.

26. Hence, defence of defendant no. 1 not to give assent to release the gold ornaments to defendant no. 2 in favour of the plaintiffs is untenable and devoid of substance.

Though plaintiffs have succeeded in establishing that they have effected entire payment towards the loan obtained by them in the sum of ₹45,000/- with interest thereon and that they are entitled for the gold ornaments deposited (pledged with defendant no. 2 in the name of defendant no. 1) and they are entitled for the same the relief the claim of the plaintiffs is however barred by law of limitation.”

6. Thus, the position emerges that there are findings of the Civil Court about the petitioners being the owners of the pledged gold. Still, at the same time, the petitioners were denied the relief of the return of gold to them because their suit was found to be barred by limitation.

7. The limitation law bars the remedy of a suit, but it does not extinguish the rights. Respondent no. 2-Bank had made it clear at the outset that the Bank was not concerned with the inter se dispute between the petitioners and respondent nos. 3 to 5. Accordingly, attempts were made to see whether the parties agreed to some amicable settlement. However, the parties are unable to arrive at any settlement.

8. Going by the findings on the title, Mr Arjun Naik justifiably submits that the amount of ₹1,60,000/- deposited by the petitioners must be returned to the petitioners.

9. Mr Usgaonkar submits that there was an arrangement between the petitioners and respondent nos. 3 to 5, in terms of which the gold ornaments were pledged to the Bank to secure a loan obtained by the petitioners. Mr Usgaonkar points out that the petitioners had sold a plot jointly belonging to the petitioners and respondent nos. 3 to 5, and therefore, the petitioners owed a certain amount to respondent nos. 3 to 5. The gold was pledged to set off and square all these transactions. Consequently, he submitted that the amount be paid to Respondent Nos. 3 to 5.

10. This Court cannot go into the disputed questions of fact. The version put forth by respondent nos. 3 to 5 is not entirely improbable. At the same time, this contention was not accepted

by the Civil Court and the Civil Court decided finally only based on the law of limitation.

11. Therefore, rather than prolong this litigation by requiring the parties to proceed to another round of litigation, we think that by balancing the equities and the rival rights, the interest of justice will be met if the petitioners are permitted to withdraw an amount of ₹1 lakh together with the proportionate interest that shall have accrued on this amount. Respondent nos. 3 to 5 are allowed to withdraw the balance amount of ₹60,000/- together with the proportionate interest that shall have accrued on the said amount. We order accordingly.

12. The Registry is to permit the withdrawal of amounts in the above proportion after the parties produce their identities and Bank details. After that, the amounts should be transferred to the Bank Account of the parties directly.

13. We clarify that this order is made in the peculiar circumstances of this case, where the Petition was entertained, and several interim orders were made. This Petition was entertained mainly because, at that time, there was no clarity as to whether respondent no. 2 would answer the definition of State within the meaning of Article 12 of the Constitution of India. Therefore, rather than relegating the parties to filing further

proceedings, we thought that the interest of justice would be served by making the above order. The Counsel also agreed that it be better if the matter is disposed of in this Court instead of embroiling the closely related parties into further litigation.

14. The Petition is disposed of in the above terms without any order for costs.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.