

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 54 OF 2000

Zina Margaret Fernandes And Ors.

...Appellants

Versus

Mary Paul D'mello (Deceased) Through Mrs.
Carol Pereira And Ors.

...Respondents

Mr. D.B. Pereira a/w. Mr. Beverly Fernanes & Mr. Jordan D'Souza i/b.
D.J. Lulia, Advocate for Appellants.

Mr. Suneel D. Mogre, Advocate for Respondent Nos.1(a) to 1(e), 2 to
6, 7(A) to 7(D), 8 & 9.

CORAM : M.M. SATHAYE, J.

DATE : 11th DECEMBER, 2023

P.C. :

1. Heard learned counsel for both sides. The Court is happy to note that the dispute in present appeal, arising out of Suit No. 5928 of 1990 is amicably settled and parties have jointly tendered Consent Terms dated 11/12/2023. The serial numbers of Respondents in the array of parties in these consent terms, differ from the serial numbers of Respondents in the appeal memo; however the parties are same.

2. The said Consent Terms are signed by Appellant No. 1 - Zina Margaret Fernandes, Appellant No.2(a) - Victor Manuel Pareira, Appellant No.5 - Ms. Rovina Gonsalves which is the maiden name of R. L. D'souza (Nee Gonsalves) and Appellant No. 3 - Rantaine Vincent Gonsalves [for himself and as Power of Attorney holder for Appellant

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No. 4 - Mrs. Rhonda Fernandes]. Appellant No.1, 2(a), 3 & 5 are present in the Court who are duly identified by their Advocate Mr. Darryl Pereira who is holding for Adv. D.J. Lulia who has signed on Consent Terms.

3. The Consent Terms are also signed by Respondent No. 1(a) - Mrs. Carol Pereira for herself and as Power of Attorney holder for Respondent Nos. 1(b), 1(c), 1(d) and 1(e). The Consent Terms are also signed by Respondent No. 2(a) - Mrs. Cynthia A. D'mello who has signed for herself and as a Power of Attorney holder for Respondent Nos. 2(b), 2(c) & 2 (d). The Consent Terms are also signed by Respondent No. 3(b) - Mr. Brearley D'Mello for himself and as Power of Attorney holder for Respondent Nos. 3(a), 3 (c) & 3(d).

4. The Consent Terms are also signed by one Mr. Ramesh Gurnani who is the partner and duly authorised person on behalf of Respondent No. 4 Partnership Firm (Developer).

5. Respondent Nos. 1(a), 2(a), 3(b) and Mr. Ramesh Gurnani (for Respondent No. 4 - Developer) are present in the Court, who are duly identified by their learned counsel Mr. Mogre, who is present in Court and who has also signed the Consent Terms as Advocate.

6. On specific inquiry made by the Court, all the aforesaid parties present in Court, have submitted that they have signed the Consent Terms out of their own volition, without any pressure and after understanding the contents and implication thereof.

7. The Consent Terms, in short provide that the amount which is

lying in this court, which was deposited pursuant to the earlier Order passed in this matter, along with accrued interest, will be permitted to be withdrawn by Appellant No. 3, who will then distribute it amongst the Appellants. Learned counsel for the Respondents has handed over the original receipt to the learned counsel for the Appellants, copy of which is annexed to the Consent Terms at page 19 (Exhibit-B). In reciprocation, the Appellants have undertaken that they will unconditionally withdraw their objections in Testamentary Suit No. 81 of 1999 and they will also unconditionally withdraw H.C.O.S. Suit No. 2038 of 2000, within 4 weeks from the date of signing these consent terms. These undertakings are accepted as an undertaking to this Court. Parties have also agreed that they are unconditionally withdrawing all allegations against each other.

8. The Respondent No. 4 - Developer has also agreed to pay an amount of Rs. 1 lakh as set out in paragraph 11 of the Consent terms. It is a common ground before the Court that the cheque referred in clause 11(V) of the Consent Terms, is drawn in a wrong name and a fresh cheque in the correct name will be issued within a period of two days from today.

9. The true copies of the Power of Attorneys (mentioned above) are annexed to these Consent Terms, as well as the authority letter issued by Respondent No. 4 - Developer in favour of Mr. Ramesh Gurnani is also annexed to these Consent Terms.

10. The Consent Terms, alongwith all its annexures, are taken on record and marked 'X' (colly) for identification.

11. The First Appeal is therefore disposed off in terms of the said Consent Terms. Decree be drawn up accordingly. No order as to costs.

12. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)