

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 848 OF 2023**

1. Shri. Hanumant Yadav Pednekar, s/o Yadav Pednekar, Age 51 years, Married, R/o H. No. 28, Behind Swami Samarth Mandir, Rumdamol, Davorlim-Salcete, Goa.
2. Smt. Sangeeta Pednekar, Age 50 years, w/o Hanumant Pednekar, H. No. 28, Behind Swami Samarth Mandir, Rumdamol, Davorlim-Salcete, Goa.

... Petitioners

Versus

1. Smt. Kulsum Mohamed Akbar, Age 55 years, Housewife, Married, R/o H. No. 40, Opp. Waxpol Service Centre, Maruti Mandir Road, Housing Board, Davorlim-Salcete-Goa.
2. Shri. Shaikh Mohamad Akbar, s/o late Shaikh Ismail, Age 70 years, Married, Businessmen;
3. Smt. Yasmin Akbar Shaikh, d/o Quasim Shaikh, Age 44 years, Housewife,

Both R/o Flat No. 14, Galaxy Apts.,
Near Cine Vishant, Aquem, Margao,
Goa.

... Respondents

Mr. Rohan Rama Dessai, Advocate for the Petitioners.

Mr. Iftikhar Agha with Mr. Ketan Morajkar, Mr. Utkarsh Sawant and Ms. Valencia Fernandes, Advocates for the Respondents.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 30th SEPTEMBER 2024

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith.
2. The matter is taken up for final disposal at the admission stage itself with consent.
3. Heard Mr. Dessai for the Petitioners and Mr. Agha for the Respondents.
4. Two orders have been challenged in the present Petition, first passed below Exhibit-64 and second is passed below Exhibit-62. Both dated 13.09.2023 in Regular Civil Suit No. 55/2011. The Petitioners are the original Defendants in the said suit.
5. Vide Application at Exhibit-64, Defendants sought permission to produce a judgment and decree dated 29.07.2019 passed by the District Court in Regular Civil Appeal No. 51/2017. By a separate Application at Exhibit-62, the Defendants prayed for framing of an additional issue. Both these Applications are rejected by the learned Trial Court.

6. Mr. Dessai appearing for the Petitioners would submit that the document that the Petitioners are seeking to produce is a judgment and decree passed by the District Court wherein the Respondents are one of the parties to the said suit and such decision is directly connected to the said suit. He submits that though the Second Appeal filed before this Court is pending, the Application ought to have been allowed. He submits that the grounds on which it is rejected are not available for such rejection. He submits that such a decision passed by the District Court is a material fact, which has to be considered while deciding the issue in the present suit.

7. The Application at Exhibit-62 is filed for framing of an additional issue. The learned Counsel for the Petitioners submits that such issue is material to decide the present suit as Special Civil Suit No. 136/2003 was dismissed and even the Appeal, is also disposed of. Accordingly, it is the contention of Mr. Dessai that both these Applications at Exhibit-64 and Exhibit-62 are required to be allowed as they go to the root of the matter.

8. Per contra, Mr. Agha appearing for the Respondents fairly submits that the document i.e. the judgment and the decree in Regular Civil Appeal No. 51 of 2017 could be allowed to be

produced on record as it is the judgment passed by the Court, which is relevant for deciding the issue in the suit. However, Mr. Agha opposes the Application at Exhibit-62 regarding framing of an additional issue on the ground that the decision passed by the District Court wherein the Respondents are one of the parties is now pending before this Court in a Second Appeal and thus, the same cannot be the basis for framing of the additional issue as tried to be projected by the Petitioners in their Application.

9. Accordingly, the Application at Exhibit-64 for production of the additional document i.e. the judgment and decree dated 29.07.2019 passed by the District Court in Regular Civil Appeal No. 51 of 2017 needs to be allowed. Besides, the said document, being the judgment and decree passed by the competent Court wherein the Respondents are one of the parties involved, it is directly connected to the issue in the present suit. Even otherwise, the Court is entitled to take judicial note of such a document.

10. The Application at Exhibit-62 filed by the Petitioners and more particularly, proposed additional issue, cannot be considered for the simple reason that a judgment passed by the Trial Court in Special Civil Suit No. 136/2003 is now pending before this Court in a Second Appeal. The document i.e. the judgment passed by the

competent Court and that of the first Appellate Court are already produced on record. The impact of such decisions will have to be assessed by the Court on the basis of other evidence produced on record. Similarly, the pendency of the Second Appeal before this Court challenging both the said judgments, also needs to be considered while deciding the said Civil Suit. Even otherwise, the judgment and decree passed by the Court which is already produced on record by way of a certified copy of the document, cannot form a ground for framing of an additional issue. Accordingly, the Application for framing of additional issue has no substance and has been rightly rejected by the learned Trial Court.

11. The Petition, therefore, could be partly allowed as far as Exhibit-64 is concerned, thereby allowing the Petitioners to produce the document on record.

12. For the above reasons, Rule is made partly absolute. Proceedings stand disposed of.

BHARAT P. DESHPANDE, J.