



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 278 OF 2025**

1. Luis Nemesio Menezes,
65 years of age, married,
Indian National,
Son of Benjamin Francisco Menezes
And his wife;

2. Marilyn Menezes,
55 years of age, married,
Indian National,
Both residents of
H. No. 225, Santar Bhat,
Piedade, Dival Ilhas, Goa.

... Petitioners***Versus***

1. Agapito Salvador Bento Menezes,
About 70 years of age,
Married, Indian National,
Son of Benjamin Francisco Menezes
And his wife;

2. Olga Perpetua Menezes,
About 63 years of age, married,
Indian National,
Both residents of
H. No. 260/1, Santar Bhat,
Piedade, Divar, Ilhas, Goa.

...Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. Bernard Fernandes, Mr. V. Braganza, Mr. Sagar Rivankar and Mr. Jeet Volvoikar, Advocates for the Petitioners.

Mr. S. N. Joshi with Ms. Sharlene Fernandes and Ms. Swapna Joshi, Advocates for the Respondent.

CORAM : VALMIKI MENEZES, J.
DATED : 16TH JULY, 2025.

ORAL JUDGMENT:

1. Registry to waive objections and register the matter.
2. Heard learned Advocates for the parties.
3. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned Advocates for the parties, the matter is finally heard and disposed of. Learned Advocate Mr. Bernard Fernandes waives service on behalf of the Petitioners and learned Advocate Ms. Sapna Joshi waives service for the Respondents.
4. The petitioners have impugned the order dated 06.03.2025 passed by the Civil Judge Senior Division at Panaji in Special Civil Suit No.9/2023/A. By the impugned order, the Trial court has refused to pass a decree in terms of the Consent Terms dated 05.12.2024 arrived by the parties and has directed

the parties to produce title documents of various properties listed therein.

5. The main contention argued by the learned Senior Advocate Mr. J. E. Coelho Pereira for the Petitioners was that the Court has failed to consider the provisions of Order 23 Rule 3 of CPC and refused to exercise jurisdiction vested in the Civil Court by refusing to pass a Decree in terms of the Consent Terms submitted by the parties. He submits that the only reason for refusing such an order to pass a Decree was based upon the wrong understanding of Order 23, since the Trial Court was of the opinion that the properties which were not the subject matter of the suit could not be included in the Consent Terms; the Trial Court has erroneously held that the parties would have to show their title to such properties, for the Court to conclude that the Decree could be passed to include properties beyond suit property.

6. In the aforementioned suit, the suit property is land under Survey No.31/13 of village Goltim, which has a building standing thereon. The suit was filed for partition of that property and the building. The Defendants / Respondents herein filed Written Statement along with a Counter Claim challenging a Deed of Relinquishment dated 11.05.2022

executed by the Defendants to relinquish their right to the heirship in the estate of their parents, in favour of the Plaintiffs.

7. The Consent Terms dated 05.12.2024, which are on record, essentially record that the Defendants ratified and accepted the execution of the Relinquishment Deed in favour of the Plaintiffs, and the Petitioners/Plaintiffs now agreed to execute a Deed of Gift in favour of the Defendants to the extent of their 3/4th undivided right in the suit property and the building. Stamp Duty was also paid along with the Consent Terms for the registration of the Consent Terms, which would operate as a transfer of the property in Survey No.31/13 of village Goltim in favour of the Defendants.

8. Since the parties have other disputes between them that relate to the family estate, they chose to record a global settlement on those disputes in the very same Consent Terms. In pursuance of this settlement, the other disputes brought about a global settlement to the allotment of family properties, which included three other properties, in which the Plaintiffs and Defendants claims Tenancy rights to the extent of half share in each of them. In respect of one of these properties i.e. land under Survey No.46/7 of village Goltim, the parties have obtained a joint declaration of Tenancy by the Mamlatdar of Tiswadi. In respect of the other two properties, the parties have

produced before this Court, the Survey Record in form I and XIV, wherein the name of the father of Plaintiff No.1 and Defendant No. 1 i.e. Francisco Benjamin Menezes is recorded in the Tenants column.

9. The provisions of Rule 23 of Order 3, if read clearly, do not act as an embargo on the Courts passing a Decree on compromise of the subject matter of the suit, which would include properties or terms beyond the subject matter of the suit. It is clear from the wording of Rule 23 of Order 3, which are quoted below:

“3. Compromise of suit.—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith[so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.]

*[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted
for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]*

[Explanation.— An agreement or compromise which is void or voidable under the Indian Contract

Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]”

[emphasis supplied]

10. This very view has been taken by a Single Judge of this Court in ***Keshav s/o Dattaram v/s Yamunabai w/o Nagoba***, reported in ***1985 SSC Online Bom 158***, which considered whether properties other than the suit properties could also be included in the Consent Terms. Therein, it has provided that as long as one of the subject matters of the Consent Terms is the suit property, the Consent Terms could extend to terms outside the subject matter of the suit. The relevant portion of ***Keshav*** (supra) is quoted below:

“18. Under the provisions of Rule 3 of Order 23, the Court has to record the compromise when it is presented to the Court and it is signed by the parties or their advocates. The claim may be adjusted by the parties in any manner, whether wholly or partly. As far as possible, the claim in compromise may relate to the subject matter in the suit. But in some cases in addition to the subject matter of the suit-the parties may also agree by the compromise to adjust their claims fully. Wording of this Rule 3 clearly shows that it must be proved to the satisfaction of the Court that the suit has been adjusted fully or in part by a lawful compromise. The term 'lawful compromise' has been the subject of decision in various Courts. I may immediately refer to the decision of our Court which was relied upon by the learned advocate for the plaintiff, reported in I.L.R., 1949 Bombay 13, where this Court observed:

"That the Court shall order such agreement or compromise to be recorded and shall pass

a decree in accordance therewith, so far as it relates to the parties to the suit."

19. These are the words used in Rule 3, According to this Rule, the Court has to satisfy on two points that there was an agreement between the parties and secondly, it was a lawful agreement. If an agreement before the Court is put forth and on the face of it, it discloses that it is contrary to the public policy, or it is otherwise tainted by fraud, the Court has no option but to record the compromise in accordance with the agreement presented before it. A compromise, by way of an agreement, stands on the same footing as a contract. It is not necessary for the Court to enquire into the further details because in terms of the agreement, if they do not disclose any defect prima facie, can be accepted and such agreements can be recorded by the Courts. It is possible that the agreement, on the face of it, may be void. In such case perhaps the Court may not record it. Such agreements may not be enforceable per se. But the agreements may be voidable and in such cases, it is not possible for the Court to judge the efficacy of these agreements. If the Court is satisfied on the point of lawful nature of agreement and if it is otherwise not against any law, the Court has no option but to record the compromise."

11. In the present case, the Consent Terms between the parties not only settle the subject matter of the suit i.e. the land under Survey No. 31/13, but also go beyond it and settle other properties which form part of the estate of Francisco Benjamin Menezes.

12. It is clear that the Consent Terms between the parties have, even if they include other properties which they claim,

would not bind a third person who is not a party to such terms. There would be no question of calling upon the parties to file their title documents to the properties under the Consent Terms; to that extent, the order of the Trial Court operates contrary to the provisions of Rule 3 Order 3 of CPC.

13. Consequently, the impugned order would have to be quashed and set aside. Having set aside the impugned order, the Trial Court is now directed to proceed to dispose of the suit and pass a Decree in terms of Consent Terms. Considering that the parties seeks to register the Consent Terms before the Sub Registrar, one of the clauses operating as a transfer of property from Plaintiffs to Defendants, the Trial Court is requested to dispose of the said suit preferably within a period of one month from passing of this order.

14. For reasons cited above, the impugned order dated 06.03.2025 is quashed and set aside. The Trial Court is directed to consider the Consent Terms and pass a Decree in terms thereof in view of the reasons cited above.

15. Considering that the suit is now being listed on 18.09.2025, the parties may appear before the Trial Court on 23.07.2025 at 10.00 am with an authenticated copy of this order

with a request to the Trial Court to dispose of the said matter in terms of the Consent Terms and direction contained herein.

16. Rule is made absolute in the above terms.

VALMIKI MENEZES, J.