



IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 5 2026

Smt. Godawari Kamu Halarnkar,
H.NO. 226, Haliwada, Britona,
Bardez, Goa, W/o. Late Kamu
Halarnkar, age 75 years.

.....Appellant.

V/s.

1. State of Goa, Through the Chief Secretary, Office of the Chief Secretary, Secretariat, Porvorim, Bardez, Goa.
2. The Chief Town Planner, Town and Country Planning Department, Government of Goa, Office of the Chief Town Planner Dempo Towers, Patto Plaza, Panaji, Goa
3. The Senior Town Planner, Town and Country Planning Department, Office of the Senior Town Planner, Mapusa, Bardez, Goa.
4. The Deputy Town Planner, Town and Country Planning Department, Office of the Town and Country Planning Department, Mapusa, Bardez, Goa.

5. The Executive Engineer, Public Works Department, Govt. of Goa, WD XVII (PHE-N) PWD Porvorim, Bardez Goa.
6. The Health Officer, Directorate of Health Services, Primary Health Centre, Government of Goa, Aldona, Goa.
7. Village Panchayat of Penha de Franca, through the Secretary, through the Secretary, Office of the Village Panchayat of Penha de Franca, Britona, Bardez, Goa.
8. Shri. Suresh N. Phadte, Presently working as Secretary, Village Panchayat of Penha de Franca, Office of the Village Panchayat of Penha de Franca, Britona, Bardez, Goa.
9. The Block Development Officer of Bardez, Office of Block Development Officer, Mapusa, Bardez, Goa.
10. Executive Engineer, Electricity Department, Government of Goa, Mapusa, Bardez Goa.
11. Assistant Engineer, Electricity Department, Sub Division-II, Porvorim, Bardez Goa.
12. Smt. Laxmi Laxman Toraskar, Aged 59 years, wife of Late Laxman Toraskar, R/O

H.No.219, Haliwada, Penha de Franca, Bardez, Goa.

13. Shri. Sanjay Laxman Toraskar, S/O Late Laxman Toraskar, Aged about 45 years, unmarried, Occupation Service, Accounts Officer, Govt. of Goa, r/o H.No.219, Haliwada, Penha de Franca, Bardez, Goa.

...Respondents.

14. Shri. Omprakash Laxman Toraskar, S/O Late Laxman Toraskar, Aged at out 36 years, unmarried, Police Officer, r/o 219, Haliwada, Britona, Bardez Goa.

Mr. Suhas Walwaikar, Advocate with Mr. Mahesh S. Raikar, Advocate for the Appellant.

Mr. Siddharth Samant, Additional Government Advocate for Respondents No.1 to 11.

Mr. Ifitkhar Agha, Advocate with Mr. Ketan Morajkar, Advocate for Respondents No. 12, 13 and 14.

CORAM: VALMIKI MENEZES, J.

DATED: 5th MARCH, 2026.

ORAL JUDGMENT:

1. Registry to waive office objections and register the matter.

2. This Appeal impugns the Order dated 10.09.2025 passed by the Court of District Judge-2 at Mapusa in Civil Suit No.29 of 2022. By this impugned Order, the Court has directed the deletion of Defendants No.1 to 11 (Respondents No.1 to 11 herein), who are all Government Departments, and as a consequence thereof has returned the Plaint, for lack of jurisdiction in terms of Section 26 of the Goa Civil Courts Act, 1965, to be presented before the appropriate Court.

The impugned Order, therefore, partakes of the jurisdiction exercised, both under Order I, Rule 10 (2) of the Code of Civil Procedure, 1908 (CPC) and under Order 7, Rule 10 of CPC.

3. Shri Agha, Learned Advocate appearing for Respondents 12 to 14 (original Defendants 12 to 14) raises a preliminary objection that the Order being essentially one by which parties to the proceedings were dropped, there is no Appeal provided against such an order under Order 43(1) CPC.

The submission appears attractive; however, the impugned Order basically drops Defendants, whilst in the same breath, returns the Plaint to be presented before the appropriate Court. An Appeal is provided

against the consequential and operative part of the Order, i.e. under Order 43 Rule 1(a) CPC, which provides for an Appeal where Plaints have been returned. The Order being composite Order, in my opinion, it is the operative part of the Order that will have to be looked at, for deciding the remedy provided under CPC, since the operative part of the Order returns the Plaintiff as a consequence of a finding in paragraphs 13 and 14 of the impugned Order that Defendants 2 to 11 are not necessary parties in the Suit.

4. The first question that arises for determination in this Appeal is whether there was a basic disclosure of the cause of action against Defendants 2 to 11, and relief sought against them in the Suit. Perusal of the Plaintiff would disclose that essentially, the Plaintiff claims an easementary right through the suit property, and the cause of action for filing the Suit is primarily against Defendants 12 to 14, who are owners of the suit land. The pleadings in the Plaintiff are to the effect that the Defendants 12 to 14 have obtained licenses and approvals from various Government Departments which are arrayed as Defendants 2 to 11, and have constructed a residential house, based upon these licenses, impeding the free access across the easement

5. It is on this basis of a claim of easementary right of access through the suit property, that the Plaintiff has sought declaratory reliefs which are found in prayer clauses (a) and (c) and for a mandatory injunction to demolish the structure belonging to Defendants 12 to 14 over the easement claimed by the Plaintiff which is found in prayer clauses (b) and (d). Thus, prayer clauses (a) to (d) in the suit are based upon, where the Plaintiff claims, is the cause of action against Defendants 12 to 14 for impinging upon the easementary rights.

6. Though pleadings in the Plaint with regard to the cause of action against the Defendants 2 to 11 are sketchy, they do allege that the Defendants 12 to 14 have obtained licences from Defendants 2 to 11 by fraud and misrepresentation.

This position is factually disputed by Defendants 12 to 14.

7. At this stage, it would not be proper to examine these averments in the Plaint in detail, to determine whether there is a full disclosure of cause of action against Defendants 2 to 11, however, for the purpose of deciding whether the Defendants 2 to 11 are necessary parties or proper parties to the Suit, suffice it to state that there are sufficient averments to maintain

the Plaintiff against these Defendants.

8. As a consequential relief to the declaration and mandatory injunction sought in prayer clauses (a) to (d) in the Plaintiff, which are against Defendants 12 to 14, the Plaintiff has also sought specific reliefs to declare the licences and approvals granted by Defendants 2 to 11, which include the Panchayat, Town and Country Planning Department, Public Works Department and the Health Department, to be null and void; these consequential reliefs would flow only if the Plaintiff succeeds in proving the existence of an easement over the suit property and on getting a declaration to that effect. Nevertheless, there are clear and unambiguous reliefs sought against the Government Departments and Statutory Authorities, such as the Panchayat, which are arrayed as Defendants 2 to 11 in the Suit.

9. It is in the light of these observations made above that the trial Court ought to have examined whether it can exercise its powers under sub-Rule (2) of Rule 10 of Order I CPC. There is no doubt that reliefs have been specifically claimed against Defendants 2 to 11. Consequence of “dropping” Defendants without specifically rejecting the Plaintiff against

them would end up in having the Plaint returned to the Plaintiff, to be presented before the appropriate Court, in this case, the Court of Civil Judge Senior Division, which would necessarily have to decide whether the reliefs sought in prayer clauses (e) to (j) against the Government Departments would have to be granted as a consequence of declaration of easement. This would again amount to granting relief against a person who is not a party to the Suit, since the trial Court had erroneously decided to drop Defendants 2 to 11. Obviously, therefore, the impugned Order has been passed without taking into consideration the consequence of dropping the parties and the effect of holding that there was no cause of action in the Suit. The trial Court appears to have suo motu taken up this cause, when none of the parties has sought rejection of the Plaint on the ground that there was non-disclosure of a cause of action. The trial Court has further given a finding at paragraphs 13 and 14 that there was no cause of action against Defendants 2 to 11 pleaded in the Plaint.

10. There is no doubt that the Court dealing with the Plaint has powers under Order 7 Rule 11 CPC to examine the Plaint and reject the Plaint in part, as against some of the Defendants, after it concludes that there is no

disclosure of cause of action against those Defendants. However, the trial Court has not taken this course and has instead decided to drop Defendants 2 to 11 from the proceedings. To that extent, the trial Court has transgressed the discretion vested in it under Order I, Rule 10(2) CPC.

11. For all the above reasons, I deem it appropriate to quash and set aside the impugned Order dated 10.09.2025 in its totality, i.e. to say, both the parts of the Order dropping Defendants 2 to 11 from the Suit, and as consequence, returning the Plaint to the Plaintiff to present before the appropriate Court.

12. For reasons stated above, the Appeal is allowed. The impugned Order dated 10.09.2025 is quashed and set aside. Consequently, the Plaint in Civil Suit No. 29 of 2022 stands restored to the file of the Court of the District Judge-2 at Mapusa, who shall now proceed to decide the Suit in accordance with law. It is made clear at this stage, that no opinion is expressed on the question of whether there is a disclosure of a cause of action since it is always open to the parties or to the Court to examine the Plaint and decide whether the Plaint is required to be rejected for any of

the reasons stated in Order 7 Rule 11, even qua some of the Defendants. The opinion expressed in this Judgment is limited to the examination of the decision of the trial Court to drop Defendants 2 to 11 who are held not to be necessary parties to the Suit.

13. The parties shall now appear before the Court of the District Judge-2 at Mapusa on 09.04.2026 at 02:30PM.

VALMIKI MENEZES, J.