



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 7 OF 2026**

1. Ms. Maria Eulalia Leopoldina Carvalho,
Daughter of late Mr. Isidoro Carvalho
Age: 70 years, retired, unmarried,
Resident of H. No. 116/1,
Nauta, Cortalim, Goa 403710;
2. Mrs. Maria Servula Urmila Cotta
Alias Maria Servula Urmila Cotta Carvalho.
Daughter of late Mr. Jose Fermino Cotta,
Age: 69 years, retired, married,
Resident of C-14/214/1, Building E Fermino Complex,
Opp. Sonata, Science Centre, Nomoxim, Caranzalem,
Goa-403002.
3. Mr. Dionisio Nicolau Francisco Carvalho,
Son of late Mr. Isidoro Carvalho,
Age: 68 years, retired, married to
4. Mrs. Sarina Monteiro alias
Sarina Florina Do Rosario
Monteiro Carvalho
Alias Sarina Florinda Do Rosario
Proenca Silva Monteiro,
Daughter of late Mr. Gusmao Miguel Monteiro,
Age: 61 years, retired,
Both residents of H. No. 509,
Silvawado, Parra, North Goa,
Goa-403510;

5. Mrs. Ana Melania Carvalho,
Daughter of late Mr. Isidoro Carvalho,
Age: 67 years, housewife, married to
6. Mr. Dilip Jose Cotta,
Son of late J. F. Fermino Menezes Cotta,
Age: 65 years, retired,
Both residents of C-14/214,
Building E Fermino Complex,
Opp. Sonata, Science Centre Nomoxim,
Caranzalem, Goa-403002.
7. Ms. Felicia Isabel Carvalho,
Daughter of late Mr. Isidoro Carvalho,
Age: 66 years, service, unmarried,
Resident of H. No. 116, Nauta Cortalim,
Goa-403710;
8. Mr. Isidoro Agostinho Tome Carvalho
Alias Tome Carvalho,
Son of late Mr. Isidoro Carvalho,
Age: 65 years, Advocate, married to
9. Mrs. Maria Dos Anjos Rodrigues
alias Verbina Emelia Maria Dos
Anjos Rodriguese Carvalho,
Daughter of late Mr. Alexander
Francis Rodrigues,
Age 58 years, housewife,
Both residents of H. No. 116/4,
Nauta, Cortalim, Goa-403710.

10. Ms. Pia Chagas Carvalho
alias Chagas Pia Carvalho,
Daughter of late Mr. Isidoro Carvalho,
Age 64 years, retired, unmarried,
Resident at H. No.116, Nauta,
Cortalim, Goa-403710.
11. Mrs. Christina Visitacao Carvalho,
Daughter of late Mr. Isidoro Carvalho,
Age 63 years, Retired, married to
12. Mr. Anthony Sylvester D'Souza,
Son of Late Mr. Stephen D'Souza,
Age 64 years, retired,
Both residents of H.No. 72,
Moica Vaddo, Pilerne,
Goa-403114;
13. Mr. Pedro Estanislau Carvalho,
Son of late Mr. Isidoro Carvalho,
Age 62 years, married, Retired,
Resident of H. No. 116/1, Nauta,
Cortalim, Goa, 403710;
14. Mr. Batista Savio Carvalho alias
Savio Baptisto Carvalho,
Son of late Mr. Isidoro Carvalho,
Age: 61 years, service, married to
15. Mrs. Maria Aldina Idalina Carvalho
alias Maria Aldina Saldanha Carvalho,
Daughter of late Mr. John Caetan Saldanha,

Age: 55 years, housewife,
Both residents of Villa V-4,
CD Scenic Acres, Chandrawaddo, Fatorda,
Goa-403602.

16. Mr. Edmundo Sahapur Nicolau Carvalho,
Son of late Mr. Isidoro Carvalho,
Age 58 years, Architect, married to

17. Amelia Bernardette Gonsalves e Carvalho
Daughter of late Mr. Antonio Gonsalves,
Age: 51 years, Teacher,
Both residents of H. No. 116, Nauta,
Cortalim, Goa-403710.

(All through POA being Petitioner No. 8) ... Petitioners

Versus

1. Mr. John Philip Pereira,
Son of Antonio Pereira,
Age: about 66 years,
H. No. 520, Nagao, Salcete, Goa.

2. Comunidade of Cortalim,
Through its Attorney
Age: About 32 years,
H. No. 343, Costa Vaddo,
Near St. Sebastian Chapel,
Majorda, Salcete, Goa,
Served through its Administrator,
The Administrator of Comunidade South Zone,
1st Floor, Old Collectorate Building,
Margao, Goa. ... Respondents

Mr. Vivek Rodrigues with Mr. Laban Carvalho and Ms. Lioba Carvalho, Advocates for the Petitioners.

Ms. Fawia Menezes Mesquita, Advocate for Respondent No. 1.

Mr. Amira Razaq, Advocate for Respondent No. 2.

CORAM:- VALMIKI MENEZES, J.

DATED :- 9th JANUARY, 2026

ORAL JUDGMENT

Registry to waive office 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. Vivek Rodrigues waives service on behalf of the Petitioners, learned Advocate Ms. Fawia Menezes Mesquita waives service on behalf of Respondent No. 1 and learned Advocate Ms. Amira Razaq, waives service on behalf of Respondent No.2.

4. This petition challenges two orders passed by the Court of Civil Judge Junior Division, 'A' Court at Vasco Da Gama in Civil Misc. Application No. 36/2018/B (filed under Order 9 Rule 13 CPC in Regular Civil Suit No. 83/2008/B). The first order under challenge is dated 12.02.2020, by which the Civil

Court allowed an application at Exhibit D-9 filed by Respondent No. 1 herein, permitting him to intervene in the application (Civil Misc. Application No. 36/2018/B). The second order dated 01.04.2025, which has been impugned herein, by which an application at Exhibit D-37 dated 27.06.2024, filed by the Plaintiff, seeking recall of the first order dated 12.02.2020, on the ground that the intervention was permitted without having any notice being issued by the Court to the original Plaintiff.

5. The following facts would be of relevance to decide the present petition:

(a) Regular Civil Suit No. 83/2008/B was filed by the original Plaintiff Maria Pia Carvalho for declaration that the name of the Comunidade of Cortalim (original sole Defendant) was wrongly recorded in the occupants column of the Survey Records in Form I & XIV of land under Survey Nos. 2, 3 and 4 of village Cortalim. Further relief was sought for a direction to delete the name of the Defendant in the Survey Records and substituting the same with name of the Plaintiff. After service on the Comunidade of Cortalim it put in appearance, however, thereafter stopped appearing and the suit came to be decreed on 01.09.2010, granting the reliefs sought in the plaint.

(b) The Decree was acted upon by the original Plaintiff substituting the name of the Comunidade of Cortalim in the occupants column of the Survey Records of the aforementioned suit properties.

(c) The original Defendant i.e. the Comunidade of Cortalim by an application under Order 9 Rule 13 CPC which is dated 05.10.2018, presented on 08.10.2018, before the Civil Court, sought for setting aside of this Decree claiming that it had no knowledge of the Decree and attributed knowledge of the Decree through the service of a mutation notice received for the change in the name in the Revenue Records. This application came to be numbered as Exhibit 1/B by the Trial Court in the disposed suit. The application was filed by the then Attorney of the Comunidade of Cortalim/Defendant, Respondent No.1(John Philip Pereira), who has supported the application by filing his affidavit.

(d) Since the cause title of this application had not mentioned that the Applicant was the Comunidade of Cortalim, the Court issued notice to the Comunidade of Cortalim, instead of issuing notice to the original Plaintiff. It is not in dispute and a matter of record, that the Plaintiff was never served with the notice of this application until she passed away on 06.04.2020.

(e) Whilst, the application for setting aside the Decree was pending, the aforementioned Attorney of the Comunidade of Cortalim, John Pereira came to be suspended by the order of the Administrator of Comunidades dated 30.04.2018, immediately prior to filing of the application for setting aside the Decree; this order came to be stayed ex-parte in an Appeal filed by John Pereira, before the Revenue Minister on 28.05.2018. The order of stay dated 28.05.2018, came to be challenged before this Court in Writ Petition No. 956/2018 in which, by an order dated 15.10.2018, was stayed and John Pereira was restrained from acting as an Attorney for the Comunidade of Cortalim.

(f) This Court ultimately disposed of this Writ Petition by order dated 21.11.2018, continuing the suspension of John Pereira, and in his place appointing the then President of the Comunidade of Cortalim to function as an Attorney, but limited his functioning to the day-to-day affairs of the Comunidade of Cortalim and prohibited the President to take any policy decisions on behalf of the Comunidade. This order, was passed in view of the fact that the Elections of the Comunidade were to take place in December, 2018.

(g) In the ensuing Elections, the Petitioner No. 16 Edmundo Carvalho (who is the son of the original Plaintiff Maria Pia Carvalho) came to be elected as a new Attorney of the Comunidade of Cortalim. It appears from the record of the Trial Court, which is referred to in the second impugned order, that a letter came to be issued on 17.05.2019, to the Advocate appearing for the Comunidade of Cortalim, requesting him to return all files of the Comunidade of Cortalim; the letter states that the files should be returned to enable the newly elected Managing Committee to decide which Advocate should represent the Comunidade of Cortalim. The letter also requests the Advocate to intimate the fresh dates of matters which were allotted to him by the earlier committee of the Comunidade of Cortalim.

(h) It appears from the record that though attempts were made by the Civil Court to serve a copy of the application under Order 9 Rule 13 CPC on the Plaintiff, the Plaintiff was never served with this application and the same remains till date on the record of the Trial Court without any decision.

(i) In the meantime, Respondent No. 1, who was by then no more Attorney of the Comunidade of Cortalim, filed an application at Exhibit D-9 for intervention dated

10.09.2018, which was listed as Exhibit D-9 before the Trial Court, seeking intervention in the Civil Misc. Application No. 36/2018. Even this application, though sought to be served on the original Plaintiff, was never served on the Plaintiff and without the Plaintiff having been notified of the same, the application came to be disposed of by the first impugned order dated 12.02.2020.

(j) The Plaintiff Maria Pia Carvalho expired soon thereafter on 06.04.2020. The original Defendant, the Comunidade of Cortalim brought the Legal Representatives of the original deceased Plaintiff on record by an application which was dated 09.01.2024. It is at this time that the newly elected Attorney i.e. Respondent No. 16, brought on record Legal Representatives of the original Plaintiff on record, who are present Petitioners.

(k) Pursuant to the present Petitioners being brought on record as Legal Representatives, they moved an application dated 27.06.2024 at Exhibit D-37 of the Trial Court for seeking recall of the order granting intervention of Respondent No. 1, since neither they nor their mother, original Plaintiff was served with the

application and the impugned order was passed without hearing them.

6. It is the primary submission of the learned Advocate for the Petitioners that the intervention was granted to Respondent No. 1 without any notice to the original Plaintiff or to the Legal Representatives of the Plaintiff after she passed away in the year 2020. The impugned order, according to the Petitioners is therefore passed contrary to the principles of natural justice and without hearing the original Petitioners. It is further contended that even otherwise, the intervenor/Respondent No. 1 has not made out any case on merits showing his right to be heard in the application under Order 9 Rule 13 CPC, which is pending before the Civil Court and the first impugned order was passed without being based on any reasons which could allow for impleadment of the parties.

7. The petition has been opposed by Respondent No. 1, who supported the impugned order primarily on the contention that, the Petitioners had knowledge of the first impugned order, way back in the year 2021, since the Petitioner No. 16, who was the then Attorney had received notice on behalf of the Comunidade of Cortalim, in this very application pending before the Trial Court; it is contended that since Respondent No. 16, is the son of the original Plaintiff and was aware of these proceedings at the relevant time i.e. in the year 2021,

when intervention was granted, and has offered no explanation as to why he has waited for three years after having knowledge of the first impugned order, to request setting aside of that impugned order. It is further contended that the Trial Court has considered the entire record and the conclusions recorded therein, more so the conclusion that Respondent No. 16 had full knowledge of the impugned order but did not act upon such order, has been correctly recorded in the impugned order and thus, does not call for any interference of this Court.

8. Learned Advocate Ms. Amira Razaq, appearing for Respondent No. 2 contends that there is nothing on the record of the Trial Court to indicate that two orders passed by this Court in Writ Petition No. 956/2018 i.e. order dated 15.10.2018 and 21.11.2018, confirming the suspension of Respondent No.1 as Attorney of the Comunidade of Cortalim, were brought to the notice of the Trial Court. It is further contended that the application under Order 9 Rule 13 CPC is before the Trial Court pending decision; according to the contention raised by the learned Advocate for Respondent No. 2, Respondent No. 1 has no locus standi to raise any issues with regard to the application under Order 9 Rule 13 CPC, which is pending before the Trial Court.

9. The main point that fall for my determination in this petition is whether the first impugned order suffers from

material irregularities and is passed without following the principals of natural justice.

There is no dispute, that the original Plaintiff Maria Pia Carvalho was never served with the copy of the notice of the application under Order 9 Rule 13 CPC for recall of the Decree nor was she served with the copy of the intervention application. Admittedly she expired on 06.04.2020, when the application under Order 9 Rule 13 CPC was pending before the Trial Court. None of the parties dispute that according to the record of the Trial Court, notice was only served on the Comunidade of Cortalim, which itself was the Applicant; it is not disputed that no notice was ever served on the original Plaintiff prior to her demise. The first impugned order was therefore certainly passed without hearing the original Plaintiff and therefore must be quashed and set aside for want of compliance with the principles of natural justice.

10. The Legal Representatives were brought on record by the Comunidade of Cortalim on 09.01.2024. The Legal Representatives were served thereafter and have appeared in the matter pursuant to which they filed an application for recall of the first impugned order.

The intervenor (Respondent No.1) has filed an application dated 08.10.2021 for bringing Legal Representatives of the original Plaintiff on record, which was rejected by the Trial

Court on 13.04.2023. Considering all these circumstances, it would be of no avail for the intervenor to argue that it is the Legal Representatives, who have to justify, the time period of three years taken by them for filing the application for recall of order. An order which is passed without hearing the parties, is a nullity and cannot be allowed to stand. The party concerned at the relevant time, when the first order was passed, was the original Plaintiff Maria Pia Carvalho and not her Legal Representatives. The order of intervention was passed prior to her demise and therefore, the knowledge of the Legal Representatives, of the pendency of the application, cannot obviate to the irregular process followed by the Court. On this count alone, the first order must be quashed and set aside.

10. This brings me to the second impugned order passed by the Court. The Court relies upon the letter sent by Respondent No.16, who was then newly elected Attorney of the Comunidade of Cortalim. Perusal of this letter shows that the same is general in nature and instructs the Advocate, in all matters relating to the Comunidade of Cortalim to return all the files and inform to the newly elected committee, of the relevant dates of their pending matters. The letter nowhere refers specifically to the pending application of the Comunidade of Cortalim before the Civil Court. The Court has also not gone through the record to ascertain, as to who had placed this letter on record. From the submissions made across

the bar on behalf of the Respondent No.1, it appears that the letter was placed on record by the Advocate, who was then appearing for the Comunidade of Cortalim. A Roznama entry has been made on 26.07.2019, stating that the Advocate appearing for the Comunidade sought to withdraw his appearance and has returned all files to the Applicant/Comunidade of Cortalim. The Advocate also recorded that he does not wish to appear for the Applicant/the Comunidade of Cortalim.

11. From these facts, there can be no reason for the Trial Court to conclude that it was Respondent No. 16, who was aware of the pendency of this particular application and ought to have sought recall of the first impugned order. Apart from the reference to this letter, there appears to be no reference made to the two orders of this Court continuing the suspension of the Respondent No.1. According to the learned Advocate appearing for Respondent No. 1, the two orders of this Court, were placed before the Trial Court by the newly elected committee of the Comunidade of Cortalim; if this be so, the Trial Court ought to have referred to them in the impugned order and passed its judgment after perusing its contents and applying its mind to their effect; the orders of this Court clearly directed that the Attorney/intervenor should not represent the Comunidade of Cortalim as its Attorney. The Trial Court has referred to these orders in its earlier order dated 13.04.2023 at

Exhibit 22, filed before it by the Comunidade of Cortalim, whilst rejecting the Comunidade's application seeking withdrawal of the application under Order 9 Rule 13 CPC.

12. The second impugned order would also have to be viewed from a different angle; what was pending before the Trial Court was not the original suit, which was by then disposed of, but was only an application under Order 9 Rule 13 CPC ; though this may be a proceeding in the disposed suit, but the application must be dealt with on the assumption that there was no pending suit. If the suit were pending, and any application was made for impleadment of a party, such as the one made by Respondent No. 1, the burden would be on the Applicant/respondent No.1 to show to the Court, its locus standi and right to be impleaded, and the manner in which it would be affected by the passing of the Decree. The provision of Order 1 Rule 10 CPC would have to be followed and the balance between the right of the Plaintiff, who is dominus litis of the suit and the claim of the party seeking impleadment would have to be balanced.

13. The first impugned order does not consider this aspect in any manner. The second impugned order, only considered the application for recall on the basis of the knowledge attributed to the Legal Representatives of the original Plaintiff and the delay in filing the application, rather than call upon the

intervenor to demonstrate his locus standi and right to be heard as a party to the suit. If the intervenor had no right to be impleaded, independently as a defendant in the suit, he ought not to be impleaded as an intervenor in the application under Order 9 Rule 13 CPC. Even otherwise, an intervenor has no right of hearing and the matter ought to have been viewed in that light.

14. The Trial Court has not considered this position of law. There would be absolutely no purpose served in allowing Respondent No. 1, to be impleaded in the application under Order 9 Rule 13 CPC, much less the suit. In any event, the original Plaintiff in the suit would be the dominus litis. The original Applicant/Respondent No.1, may take recourse to other remedies available at law, which may also include, if he is so advised, remedies under the Code of Communitade. He certainly does not have a right to be heard in an application which is primarily between the original Plaintiff and the Defendant. His only claim is that, as a component of the Communitade of Cortalim, he has the right to defend the interest of the Communitade of Cortalim; he claims this right on the allegation that there is collusion between the present committee of the Communitade of Cortalim and the Legal Representatives of the original Plaintiff or the earlier committees of the Communitade of Cortalim. Respondent

No.1, therefore, even otherwise has no locus standi to plead the case on behalf original Defendant in the suit, much less in an application under Order 9 Rule 13 CPC filed by the original Defendant.

15. For the reasons stated above, the impugned orders dated 12.02.2020 and 01.04.2025 are quashed and set aside and the application at Exhibit D-9 dated 10.09.2018 for intervention stands dismissed. Consequently, the application at Exhibit D-37 dated 27.06.2024, filed by the Legal Representatives of the original Plaintiffs in Regular Civil Suit No. 83/2008/B, is allowed.

16. The Trial Court shall proceed to decide the application under Order 9 Rule 13 filed by the original Defendant (the Comunidade of Cortalim) on its own merits and preferably within a period of three months from today. This is in view of the fact that the pleadings on the application filed under Order 9 Rule 13 CPC, are complete.

17. Rule is made absolute in terms of prayer clause(a) of the petition. No Costs.

VALMIKI MENEZES, J.