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Presented on : 04.01.2021

Registered on: 04.01.2021

Decided on : 10.05.2023

Duration : Days Months Years.  
06 04 12

**IN THE COURT OF SENIOR CIVIL JUDGE, A-COURT  
AT MAPUSA, GOA.**

(Before: Ms. Shilpa Pandit, Civil Judge, Senior Division,  
A-Court at Mapusa.)

**CNR No.GANG04-000510-2021**

**Special Civil Suit No. 8/2021/A**

1. Leo Joseph Cruz De Souza,  
s/o late Fortunate de Souza,  
55 years of age,
2. Suvartha De Souza,  
48 years of age,  
w/o Leo Joseph Cruz De Souza,
3. Derek De Souza,  
57 years of age,  
Through his POA and wife:

Mrs. Leena De Souza,  
51 years,

4. Leena De Souza,  
51 years of age,  
w/o Derek de Souza,

All Indian Nationals,  
Residents of:  
H.No.243, Bamonvaddo,  
Candolim, Bardez- Goa. ... Plaintiffs.

V e r s u s

1. John Wilfred Fernandes,  
84 years of age,  
S/o Henrique Caetano Fernandes.
2. Nina Santo e Fernandes,  
75 years, Wife of John Wilfred Fernandes,  
Both Indian Nationals and both residing at:  
A-16, Kalumal Estate,  
Juhu- Mumbai.
3. M/s Sheraton Township LLP,  
Through its Partners,  
Registered address:  
1002, Pali Palms, Near Mini Punjab,  
16<sup>th</sup> Road, Bandra (West),  
Mumbai - 400050.
4. Suresh Jairam Tekchandani,  
51 years, Indian National,  
Residing at:  
H. No. 1002, Pali Palms, Near Mini Punjab,  
16<sup>th</sup> Road, Bandra (West),  
Mumbai - 400050.

5. Mario De Souza,  
59 years of age,  
6. Romaldo Wilfred Christopher de Souza,  
56 years of age,  
7. Lourdes Conceicao De Souza,  
49 years of age  
Wife of Romaldo Wilfred  
Christopher de Souza

All Indian Nationals,  
All residing at:  
H. No.243, Bamonvaddo,  
Candolim, Bardez Goa.

... Defendants

Learned Advocate Shri S. Gaonkar represents the plaintiffs.

Learned Advocate Shri S. Dessai represents the defendant nos.1  
and 2.

Learned Senior Advocate Shri S. Lotlikar with Ld. Advocate  
Ms. S. Keni represents the defendant nos.3 and 4.

None present for other defendants.

**Order on exhibits 11 and 12**

(Delivered on this the 10<sup>th</sup> day of the month of May of the year  
2023)

This is a common Order is passed on the applications  
for rejection of plaint under Order 7 Rule 11 of CPC filed by the  
defendants 1 to 4 at exhibits 11 and 12.

2. The same is objected by the plaintiff by the common reply at exhibit 18.

3. Heard Ld. Senior Advocate Mr S. Lotlikar for the defendants 3 and 4, Ld. Advocate Mr. S. Dessai for the defendants 1 and 2 and Ld. Advocate Shri S. Gaonkar for the plaintiffs.

4. Ld. Advocate for the defendants 1 to 4 have relied on the following Judgments: (1) *T. Arvindandam vs. T. V. Satyapal & ors* (1977 4 SCC 467), (2) *Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trust* ( 2012 8 SCC 706), (3) *Canara Bank vs. P. Selathal & ors* and (4) *Xavier D'Souza anr vs. Luis D'Souza & anr* (2008 SCC Online Bom 588). I have duly perused the record and considered the same.

5. It is the case of the defendant 1 and 2 that the plaintiffs have filed the present suit for declaration, permanent injunction, recovery of possession and damages with consequential relief of

Rs.1,50,00,000/- with interest @18% p.a. till the actual delivery of the properties. They claimed that the plaintiffs do not have any valid subsisting cause of action and/or right to suit. The judgment and decree dated 30.06.2009 passed in SCS 34/2006/A clearly reveals that plaintiffs and/or their mother/mother-in-law had no right, title and/or interest on the suit property. Hence, the decree was passed in the said suit declaring the defendants as co-owners to the suit properties. This suit is filed to nullify the decree dated 30.06.2009 inspite of it attaining finality for which execution is pending. The clever drafting also assails the effect, efficacious and tenability of the Will dated 18.3.1992 without specifically assailing the same to regal out of law of limitation. The present suit is filed to circumvent the law of limitation and to overcome the finality attained by the said Judgment. The rights of the plaintiff and the defendants 1 and 2 have been crystallised by the Judgment and decree, and therefore, the reliefs claimed in the present suit cannot be granted. The plaintiffs were aware of the said Judgment and decree since at least the time their mother expired in the year 2012 as they have been participating and defending the execution proceedings. The



present suit is a vexatious and frivolous one filed to abuse the process of Court. Hence, prayed that the plaint be rejected on the ground of non-disclosure of cause of action and being barred by the law of limitation. Reliance is placed on the aforesaid Judgment.

6. In the case of *T. Arvandandam (supra)* it is held by the Hon'ble Apex Court that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, then it should exercise its power under Order 7 Rule 11 of CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has creating the illusion of a cause of action, then the Court must nip it in the bud at the first hearing by examining the party under Order 10 of CPC.

7. In the case of *Church of Christ Charitable Trust and Education Charitable Society ( supra)* it is held by the Hon'ble Apex Court that plaintiff must aver clearly the facts necessary to enable him to obtain decree and must produce documents on which cause of action is based. If averments in the

plaint do not disclose clear right or material basis to sue and only creates illusion of cause of action by clear drafting, then the Court should reject the plaint at the first hearing.

8. In the case of *Canara Bank (supra)* it was found by the Hon'ble Apex Court that the plaintiff had vaguely averred about the knowledge of the Judgment and decree passed by the DRT and the Mortgage of the property only with a view to get out of the Law of Limitation and also to bring the suits within the period of limitation. It was held that on such vague averments, the plaintiff cannot get out of the law of limitation.

9. In the case of *Church of Xavier D'Souza (supra)* it was found by the Hon'ble High Court that plaintiff has suppressed the date of Award and the fact that the defendant also received equal sum of compensation. The plaintiff made efforts to get such a relief in suppressing the dates of various documents referred to by him only to come out of the period of limitation. Hence, it was held that the rejection of the plaint on the point of limitation could not be faulted.

10. Whereas it is the contention of the Ld. Advocate for the plaintiff that the present application is filed only to delay the interim relief of the plaintiff. It is claimed that by said Judgment and decree dated 30.6.2009, the defendants 1 and 2 are declared as co owners and not exclusive owners of the suit property. In any case the impact of the said Judgment cannot be the basis for rejecting the plaint at this stage. Reliance placed by the plaintiff on the MOU dated 25.7.2019 cannot be looked into at the stage of rejection of the plaint which otherwise is a contingent contract and is not binding in law unless and until the contingency agreed for had occurred or made to happen by the defendants. The cause to file the present suit arose when the defendants 1 and 2 disposed the suit property in violation of section 17 of the Goa Succession Act. The cause of action has no connection to the existence or the validity of the Wills dated 18.3.1992. They have denied that the present suit is vexatious or frivolous and is without any cause of action and/or any clear rights to sue. Hence, prayed that the application be rejected.



11. Coming to the plaint, the plaintiffs have filed the present suit with respect to the suit properties bearing survey nos..28/17 and 41/1 of Village Candolim. The fact that the suit properties belonged to Henrique Caitano Fernandes who was married to Maria Ursula Antoneta Mascarenhas is not disputed. The relation between the parties is also not disputed. The fact that the plaintiffs and defendants 5 and 6 as the heirs of Sylvia is not disputed. Plaintiffs are claiming right to the suit properties being the heirs of Sylvia.

12. The fact that the mother of Sylvia i.e. Mrs Ursula had executed a Will dated 18.3.1982 is also admitted. This Will was well within the knowledge of Sylvia during her life time. There is no dispute about this. The filing of the Special Civil Suit no.34/2006 by the defendants 1 and 2 herein against Sylvia is admitted. The fact that she was served and was contesting the said suit is also admitted. Plaintiffs are claim that Sylvia could not follow up the said suit. The fact that the said suit was disposed by Judgment and Order dated 30.6.2009 is admitted. Further the fact that the said suit has attained finality is also

admitted. In that suit, reference is made to the Will dated 18.3.1982 of Ursula and a finding is also given therein that Sylvia was aware of the said Will. Further finding is also given in the said suit that Sylvia has no right to the suit properties except the usufruct right during her life time. This Will was neither challenged by Sylvia nor by the plaintiffs. Hence, the finding given in the said suit that Sylvia had no right to the suit properties has attained finality. The plaintiffs are claiming as having right in the suit properties as derived from Sylvia but the Court has already held that Sylvia had no right in the suit properties. Thus, one fails to understand as to how the plaintiffs can claim as having right in the suit properties? That being so, it is rightly claimed by the Ld. Senior Counsel and Ld. Advocate for the defendants that the finding given by the Ld. Trial Court in the said Judgment dated 30.6.2009 that the plaintiffs are the co-owners in possession of the suit property means that they are the only co-owners inter-se of the suit properties. The said Order is based on the reasoning given in the Judgment. In the reasoning the Court had arrived to a finding that Sylvia had no right to the suit properties. That being so, by the said Judgment


the Ld. Trial Court has held that the plaintiffs are the only co-owners of the suit properties. This finding is based on the evidence and also after taking into account the Will dated 18.3.1982 of Ursula. Thus it is rightly pointed out that the plaintiffs and defendants nos. 5 and 6 have no right to sue with respect to the suit properties. Thus, relying on the aforesaid Judgments, relied upon by the Ld. Senior Counsel and the Ld. Advocate for the defendants, the plaintiffs have no right to sue and consequently no cause to initiate the present suit. Thus, the plaint is barred under Order 7 Rule 11(a) of CPC.

13. In the result, both the applications for rejection of plaint filed by the defendant 1 to 4 at exhibits 12 and 13 are granted. The plaint is rejected under Order 7 Rule 11(a) of CPC.

Proceedings are closed.

Pronounced in the Open Court.



  
( Shilpa S. Pandit )  
Senior Civil Judge, 'A' Court at  
Mapusa.