

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.107 OF 2024

1. Shri Ramesh Krishna Raut
Dessai (Expired) Through his
Legal heirs, 89 years of age

1a) Mr. Johnny Cardoso,
52 years of age, Son of
Mr. Joao Xavier Cardoso,
Resident of Cotto,
Amona, Quapem, Goa

.... PETITIONERS

Versus

1. Smt. Champabai Sadashiv
Raut Dessai, Major of age,
Widow of late Sadashiv Raut
Dessai, Resident of House
no. 369/2, Dhakutole,
Assolda, Quepem, Goa.

2. Shri. Dnyaneshwar Sadashiv
Raut Dessai, Major of age,

3. Smt. Hema Dnyaneshwar
Raut Dessai, Major of age,
Wife of Dnyaneshwar Raut Dessai,
Both residents of House no. 369/2,
Dhakutole, Assolda, Quepem, Goa.

4. Shri. Ajit Sadashiv Raut Dessai,
Major of age, Son of late Shri. Sadashiv
Raut Dessai, Resident of
House no. 369/1, Dhakutole,
Assolda, Quepem, Goa.

5. Smt. Anjali Ajit Raut Dessai,
Major of age, Wife of Shri Ajit Raut Dessai,

Resident of House no. 369/1,
Dhakutole, Assolda, Quepem, Goa.

6. Shri. Sudin Sadashiv Raut Dessai,
Major of age, Son of late Shri. Sadashiv
Raut Dessai, Resident of House no. 369/1,
Dhakutole, Assolda, Quepem, Goa.

7. Smt. Savita Sudin Raut Dessai,
Major of age, Wife of Shri. Sudin Sadashiv
Raut Dessai, Resident of House no. 369/1,
Dhakutole, Assolda, Quepem, Goa.

8. Shri. Vithoba Datta Dessai,
Major of age, Residing at
H. No. 10, Bhiunsa,
Cuncolim, Salcete, Goa.

9. Smt. Laxmi Vithoba Dessai,
Major of age, Wife of Shri. Vithoba
Dessai, Residing at H. No. 10,
Bhiunsa, Cuncolim, Salcete, Goa.

10. Shri. Suryajirao Atmaram Rane
Major of age, Son of Atmaram Rane,
R/o. H. No. 32, Vichundrem,
Netravali, Sanguem, Goa.

11. Smt. Nandini Suryajirao Rane,
Major of age, Wife of
Shri. Suryajirao Rane,
Resident of H. No. 32, Vichundrem,
Netravali, Sanguem, Goa.

12. Smt. Pushpalata Kapil Raut Dessai,
Major of age, Widow of Kapil Dessai,
Resident of House no. 242,
Dhatimol Sanvordem,
Sanguem, Goa.

13. Mast. Chandreshwar Kapil
Raut Dessai, Minor in age,

Resident of House no. 242,
Dhatimol Sanvordem, Sanguem, Goa,
Represented by natural gaurdian
& mother, Respondent No. 12-
Pushpalata Kapil Raut Dessai,

14. Mas. Mallikarjun Kapil Raut Dessai,
Minor in age, Resident of
House no. 242, Dhatimol,
Sanvordem, Sanguem, Goa,
Represented by natural gaurdian
& mother, Respondent No. 12-
Pushpalata Kapil Raut Dessai,

14. Mast. Visheshwar Kapil Raut Dessai,
Minor in age, Resident of
House no. 242, Dhatimol
Sanvordem, Sanguem, Goa,
Represented by natural guardian and
mother i.e. Respondent no. 12, Smt. Pushpalata
Kapil Raut Dessai.

16. Shri. Bharat Khandu Raut Dessai,
Major of age, Son of Shri. Khandu
Raut Dessai, Residing at H. No. E-84,
Adamoror, Assolda, Quepem, Goa.

17. Smt. Nirmal Bharat Raut Dessai,
Major of age, Wife of Bhrat Raut Dessai,
Residing at H. No. E-84, Adamoror, Assolda,
Quepem, Goa. (deceased through her legal heirs)

17a) Mr. Sidharaj Bharat Raut Dessai,
Major of age, Son of Bharat Raut Dessai,

17b) Ms. Shubhada Bharat Raut Dessai,
Major of age, Daughter of Bharat Raut Dessai
Both residents of Adamorod, Assolda, Quepem, Goa.

18. Smt. Saday Sadanand Dessai,
Major of age, Wife of Sadanand Dessai,
Resident of House no. not known,

Behind Sincro Hotel,
Fatorda, Margao, Goa.

19. Shri. Sadanand Dessai,
Major of age, Resident of
House no. not known,
Behind Sincro Hotel,
Fatorda, Margao, Goa.

20. Shri. Suraj Shambu Raut Dessai,
Major of age, Resident of Sundunes
Apartments, Nr. Solmar Hotel,
Miramar, Panaji, Goa.

21. Dr. Sujata Dinkar Savant,
Major of age,

22. Dr. Dinkar Savant,
Major of age, Both residents of
T-3, Laxmi Apartments, Green
Street, Nr. Ashoka Hotel,
Karwar, Karnataka.

23. Dr. Pradip Dessai,
Major of age, Resident of
Sanjay Nagar, Bangalore, Karnataka.

24. Dr. Sunita Desai,
Major of age, Resident of
Sundunes Apartments, Nr. Solmar Hotel,
Miramar, Panaji, Goa.

25. Miss. Savita Shambu Raut Dessai,
Major of age, Resident of Sundunes Apartments,
Nr. Solmar Hotel, Miramar, Panaji, Goa.

26. Mr. Deepak Guru Kubal,
Major of age,

27. Smt. Deepali Guru Kubal,
Major of age, Both residents of
Kubalwada, Vengurla, Maharashtra.

28. Shri. Vivek Guru Kubal,
Major of age, Residents of
Kubalwada, Vengurla, Maharashtra.

29. Mr. Dilipa Pandurang Gauns Dessai,
Major of age,

30. Mrs. Alka Dilipa Gauns Dessai,
Major of age, Both residents of
Avedem, Quepem, Goa.

31. Smt. Avanti Uttam Gauns Dessai,
Major of age,

32. Shri. Pranav Uttam Gauns Dessai,
Major of age,

33. Mr. Tushar Uttam Gauns Dessai,
Major of age, All residents of
Raghav Apartments, 3 rd floor,
Flat no. B-13 & B-14,
Borda, Salcete, Goa.

34. Smt. Sumitra Ramesh Raut Dessai,
Major of age, Wife of Shri. Ramesh
Krishna Raut Dessai Residing at
H. No. E-83, Adamoror,
Assolda, Quepem, Goa.

35. Shri. Shambhu Krishna Raut Dessai
(since deceased) (Expired),
Son of Krishna Raut Dessai,
Residing at H. No. E-83,
Adamoror, Assolda, Quepem, Goa.

36. Smt. Shashikala Shambhu
Raut Dessai, major years of age,
Wife of Shri. Shabhu Raut Dessai,
Residing at H. No. E-83,
Adamoror, Assolda,
Quepem, Goa.

... RESPONDENTS

Mr. Ashwin D. Bhobe with Ms. Shaizeen Badruddin Shaikh, learned Advocates for the Petitioners.

Mr. Ivan Santimano, learned Counsel for the Respondent Nos, 2, 3, 4 and 5.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 14th February, 2024

ORAL JUDGEMENT

1. Rule.
2. Rule is made returnable forthwith.
3. The matter is taken up for final disposal with consent.
4. Heard learned Counsel Mr. Ashwin Bhobe with Ms. Shaizeen Shaikh, Advocates for the Petitioners and Mr. Ivan Santimano, learned Counsel for the Respondents
5. Mr. Bhobe, learned Counsel appearing for the Petitioners would submit that the impugned order is illegal and is required to be quashed and set aside as the learned Trial Court failed to consider that reasons disclosed in the application are sufficient enough to bring on record the legal representatives of the deceased Defendant No. 25.
6. He would submit that one of the legal heirs i.e. wife of

Defendant No.25 is already on record and hence provisions of Article 120 of the Limitation Act will not apply. The learned Trial Court misconstrued above aspect and failed to consider that Article 113 of the Limitation Act will apply. Even otherwise, the knowledge of the Advocate of the Petitioner cannot be attributed as knowledge of the Petitioner himself.

7. Mr. Santimano, learned Counsel for the Respondents while supporting the contentions of the Respondents, supported the findings of the Trial Court and claimed that no interference is necessary.

8. Rival contentions fall for consideration.

9. The Petitioners are the Plaintiffs whereas the Respondents are the Defendants. The suit is filed claiming declaration that the Plaintiffs and Defendants are co-owners and in joint possession of the suit property along with other reliefs. The suit was filed somewhere in the year 2009.

10. During the pendency of the said suit, Defendant No. 2 intimated the Trial Court about the death of Defendant No.25 and claimed that the suit stands abated against the Defendant No.25. The Petitioners/Plaintiffs filed an application for bringing legal heirs of the Defendant No.25 on record vide exhibit 108. In the

said application, the Petitioner claimed that though Defendant No.25, Deepak expired on 25.08.2016, living behind his wife Deepali, who is already on record as Defendant No. 26, his other legal heirs i.e. the son by name Sunil and Daughter-in-law, Mrs. Ashwini are required to be brought on record. The Petitioners also claimed that the death of Defendant No.25 was intimated by Defendant No.2 only on 14/10/2022 and since the widow of Defendant No.25 by name Deepali is already on record, there is no question of abating the suit. It is then claimed that since the intimation was given on 14/10/2022 which is the knowledge about the death of Defendant No.25, the application is within time.

11. The said application was opposed by Defendant No.2 to Defendant No.25 and thereafter the impugned order was passed.

12. First of all, it is to be kept in mind that one of the legal heirs of Defendant No.25 i.e. his wife is already on record as Defendant No.26. Hence, the estate left by the Defendant No.25 is duly represented by his widow, Defendant No.26.

13. Secondly, it is necessary to keep in mind that when one of the legal heirs is already on record, there is no question of abatement of the suit. The other legal heirs could be brought on record with the aid of Article 113 of the Limitation Act, within a

period of 3 years.

14. The reasoning of the learned Trial Court that Article 120 of the Limitation Act attracts to the present proceedings is incorrect. The abatement though operates automatically, only when no legal heirs of the deceased persons are brought on record. Even if, one legal heir is already on record representing the estate of the deceased, the suit cannot be considered as abated against the deceased person.

15. Besides, the other legal heirs of the deceased Defendant No.25 could be brought on record by disclosing the reasons sufficient for condoning the delay.

16. In this matter though there is another suit pending between the parties wherein legal heirs of Defendant No.25 were already brought on record in the year 2019, that date could be taken into consideration for the purpose of counting limitation as provided under Article 113 of the Limitation Act.

17. Even otherwise, the knowledge of the Advocate of the Petitioner cannot be attributed as personal knowledge of the Plaintiff/Petitioner. In such circumstances, when Defendant No.25 was already represented by Defendant No.26 in the suit and no intimation was given about his death in the present suit, the

knowledge of the Petitioner/Plaintiff cannot be stretched so far in connection with other suit. The Defendant No.2 by filing an application in this matter disclosed about the death of Defendant No.25 and claimed that the suit is abated. This intimation could be considered as the starting point/knowledge of the Petitioner/Plaintiff.

18. The legal heir i.e. the widow of Defendant No. 25 is already on record and hence the reasons disclosed in the application could have been considered as sufficient for condoning the delay and bringing the other legal heirs on record.

19. The application for bringing the legal heirs on record with reasons could have been considered as the application condoning the delay and setting aside abatement, if any.

20. The impugned order therefore suffers from non-application of mind and incorrect exercise of jurisdiction. The impugned order is therefore quashed and set aside. The application for bringing legal heirs is allowed.

21. Rule is made absolute in above terms.

BHARAT P. DESHPANDE, J.