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IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 45 OF 2023

Mr. Anand Visvambora Bandodkar, Since
deceased, aged 86 years, Through His
legal Heirs,

1. Mrs. Sunita Bandodkar, Widow,
Aged 82 Years, Resident of House
No. 24/C, Bellow, Nuvem, Salcete
Goa.
 2. Damodar Anand Bandodkar, Son,
Aged 60 years,
 3. Dipiya Damodar Bandodkar,
Daughter in law, Aged 55 years,
Both residents of H. No. 12,
Murdagrande, Nuvem, Salcete, Goa.
 4. Mr. Prashant Anand Bandodkar,
Son, Aged 55 years,
 5. Vidyha Prashant Bandodkar,
Daughter in law, Aged 49 years,
Both residents of House No.24/C,
Belloy, Nuvem, Salcete, Goa
- Petitioners.

Versus

Fr. Antonio Ornelas Piedade Barbosa,
Since deceased through his sole
testamentary heiress,
Mrs. Tereza Paula Barbosa, Resident at
Rua Principal Lote 15-1, Esq. Alto Dos
Lumbes, 2775, Carcavelhos, Portugal,
Herein represented by her duly
constituted attorney, Mrs. Leopoldina
Maria Piedade Dias e Barbosa, widow of
Jose Barbosa, Resident at House No331,
Uzro, Raia, Salcete, Goa.

.... Respondents.

WITH
WRIT PETITION NO. 56 OF 2023

Mr. Anand Visvambora Bandodkar, Since
deceased, aged 86 years, Through His

legal Heirs,

1. Mrs. Sunita Bandodkar, Widow,
Aged 82 Years, Resident of House
No. 24/C, Bellow, Nuvem, Salcete
Goa.
 2. Damodar Anand Bandodkar, Son,
Aged 60 years,
 3. Dipiya Damodar Bandodkar,
Daughter in law, Aged 55 years,
Both residents of H. No. 12,
Murda Grande, Nuvem, Salcete, Goa.
 4. Mr. Prashant Anand Bandodkar,
Son, Aged 55 years,
 5. Vidyha Prashant Bandodkar,
Daughter in law, Aged 49 years,
Both residents of House No.24/C,
Belloy, Nuvem, Salcete, Goa
- Petitioners.

Versus

Mr. Jose Barbosa alias Jose Mariano
Francisco da Piedade Barbosa,
Since deceased through his testamentary
heirs,

1a) Mrs. Hazel Lucia Dias,
Daughter of Arthur Dias,

1b) Mr. Walter Cabral,
Son of Jose Alvaro Cabral,

1c) Mrs. Leopoldina Maria Piedade
Dias e Barbosa, (Since deceased) widow
of Jose Barbosa,

All of them resident at House No.331,
Uzro, Raia, Salcete, Goa.

.... Respondents.

Mr S. D. Lotlikar, Senior Advocate with Ms Sayli Kenny, Advocate
for the petitioner.

Mr S. G. Desai, Senior Advocate along with Mr Tejas Rane and Ms
Shalka Shelke, Advocates for the respondent.

CORAM:

BHARAT P. DESHPANDE, J

Reserved on :

5th August 2024

Pronounced on :

10th September 2024.

JUDGMENT:

1. Rule.
2. Rule is made returnable forthwith.
3. Both these matters are taken up for final disposal at the admission stage with consent of the parties.
4. Both these petitions are filed by the petitioners thereby challenging the orders passed by the First Appellate Authority dated 31.3.2022 in Miscellaneous Civil Appeal Nos.91 of 2016 and 36 of 2019. Petitioners are the original defendants in a suit filed by the Fr Antonio Barbosa (deceased) bearing Regular Civil Suit Nos. 317/2000/III(new) and 318/2000/III(new). In the said suits petitioners/defendants raised issue of tenancy and accordingly an issue to that effect was framed and the suit was kept sine die till the disposal of the decision of Tenancy Court on such issue.
5. Though initially the learned Civil Court did not refer to the tenancy issue immediately after framing it, such issue was referred to the Mamlatdar somewhere in the year 1997. However, it is a matter of record that sole plaintiff Fr Barbosa expired on 23.8.1995.
6. Matter was taken up before the Mamlatdar and subsequently sole defendant expired on 15.5.2005.
7. It so happened that though the suit was kept sine die and the proceedings were taken up before the Mamlatdar in connection with tenancy issue, legal heirs of the original plaintiff and original

defendant were brought on record in the tenancy case pending before the Mamlatdar. No application was filed in the suit by the respective parties for bringing legal heirs.

8. It so further happened that the jurisdiction of the Mamlatdar to consider the tenancy matters would then shifted to the Civil Court and accordingly proceedings before the Mamlatdar were brought back to the Civil Court wherein suit was pending. Thus along with the tenancy issue, suit was also taken up and at that time it was realised that legal heirs remained to be brought on record in the suit though somewhere on 31.1.2009, Advocate for the defendant filed an application under Order 22 Rule 10-A of CPC informing that sole defendant expired on 15.5.2005. It is also a matter on record that no notice was issued to the learned counsel for the plaintiffs of such intimation since the suit was kept sine die.

9. Application for bringing legal heirs filed in the suit was contested by the defendants wherein learned Civil Court passed an order dated 26.8.2016 thereby dismissing both the applications filed at Exhs. 22 and 27. Petitioners then filed appeals bearing Misc. Civil Appeal No.91 of 2016 and 36 of 2019 which came to be allowed by the impugned order thereby condoning the delay and setting aside abatement and bringing legal heirs of the parties on record which are challenged in these proceedings.

10. Mr Lotlikar would submit that Fr Barbosa expired in the year 1995 whereas reference by the Civil Court was much subsequent to it and thus it was without jurisdiction as suit abated automatically. He would submit that such reference itself to the Mamlatdar is bad in law as by that time the suit stands abated for failure to bring on record legal heirs of the sole deceased plaintiff. No application was filed within time in the civil suit for bringing the legal heirs.

11. Mr Lotlikar would submit that though reference was taken up by the Mamlatdar, memo was filed somewhere in January 2006 stating that defendant/Anand expired. An application was filed for bringing heirs which was vehemently opposed by the respondents/plaintiffs and such order was challenged up to Administrative Tribunal.

12. Mr Lotlikar, would submit that the respondents/plaintiffs therefore cannot be allowed to appropriate and reprobate with regard to the same contention which they have opposed before the Mamlatdar.

13. Mr Lotlikar, would submit that an application for bringing legal heirs in the suit was filed in October 2016 i.e. after a period of 20 years from the death of Fr Barbosa which cannot be condoned.

14. Mr Lotlikar would further submit that proceedings conducted before the Mamlatdar, though on the basis of the reference made by

the Civil Court, is totally an independent proceedings and legal heirs were required to be brought on record in the suit within time.

15. Mr Lotlikar would submit that since the original plaintiff died in the year 1995, reference of tenancy issue made by the Civil Court somewhere in the year 1997 is clearly null and void as such reference was still born.

16. Mr Lotlikar while arguing the matters would submit that the learned Trial Court was right in rejecting the applications, however, the First Appellate Court committed jurisdictional error by reversing such orders.

17. He submits that plaintiffs failed to show sufficient cause for condonation of delay and also for setting aside abatement and thus the suit itself stands abated.

18. Mr Desai appearing for the respondents while supporting the findings of the First Appellate Court would submit that both the original parties were alive when the issues were framed by the Civil Court and thereafter the matter was kept sine die. He submits that as per Tenancy Act and more specifically Section 58(2) of the Tenancy Act, Civil Court is bound to refer such issue to the Mamlatdar and to adjourn the civil suit till the disposal of such issue. Mr Desai would submit that the issue was referred to the Mamlatdar, main suit was kept sine die which clearly show that tenancy issue was required to be decided before proceeding with the suit.

19. Mr Desai would submit that once legal heirs are brought on record in a subsidiary proceedings, there is no need to bring the legal heirs in the main proceedings. Even otherwise he would submit that the learned First Appellate Court has discussed this aspect in minute detail and thus such order needs no interference in the supervisory jurisdiction of this Court.

20. From the facts emerging from the First Appellate Court orders impugned in the present proceedings would clearly reveal that civil suits were kept sine die once tenancy issues were framed. It shows that parties and the advocates were not required to appear before the Civil Court in the said civil suits. It also shows that no steps or proceedings were conducted in the said civil suit till the disposal of the tenancy issue.

21. Purpose of Section 58(2) of the Tenancy Act clearly revealed that when an issue is raised regarding claim of tenancy in any civil proceedings, the same is required to be referred to the competent authority i.e Mamlatdar to decide as to whether party claiming is a tenant of the suit proceedings. If Mamlatdar comes to the conclusion that the party claiming is not a tenant, only then the Civil Court can proceed further with the suit. Thus the issue of tenancy framed and referred to the Mamlatdar is the main issue with regard to jurisdiction of the Civil Court to entertain such civil suits. Such

jurisdiction depends upon the decision of the Mamlatdar in the tenancy case.

22. Even if such an issue is referred to the Mamlatdar and registered as a separate case between the so called tenant and the landlord, it cannot be considered as a separate proceedings and independent to the civil suit. The fact that the civil suit is required to be kept sine die till decision of such issue by the competent authority would itself show that it is clearly a connected proceedings and in fact decision of the Mamlatdar would certainly be a factor to be considered in the civil suit.

23. Keeping in mind the above factual aspects, matter needs to be considered. Admittedly sole plaintiff expired on 23.8.1995 when the suit was in a sine die state. It is no doubt true that somewhere in the year 1997 a suit was taken up. However at that time it was only for the purpose of referring the issue of tenancy to the concerned Mamlatdar. For that purpose defendant furnished relevant documents for referring the issue of tenancy to the Mamlatdar and then again suit was kept sine die.

24. After the matter was referred to the Mamlatdar, the sole defendant expired somewhere on 15.5.2005.

25. It is also a matter of record that an application was filed for bringing legal heirs of the sole defendant, before learned Mamlatdar. Similarly an application for bringing legal heirs of the sole plaintiff

was also filed, which is clear from the tenancy proceedings and orders passed therein. Applications for bringing legal heirs of both the parties were allowed by the learned Mamlatdar and accordingly tenancy proceedings continued.

26. It is also a matter of record that the application filed for bringing legal heirs of the sole defendant Anant was contested up to the Administrative Tribunal however authorities clearly observed that sufficient cause is shown for bringing legal heirs of both the parties in the tenancy proceedings. Thus it is clear that legal heirs of both the deceased parties were brought on record in the tenancy proceedings when the suit was kept sine die.

27. Matter further shows that though an application was filed under Order 22 Rule 10(A) of the CPC in the civil suit by advocate for the defendant disclosing that sole defendant expired, it is also clear that at that time suit was kept sine die and no notice of such application was issued by the civil Court to the learned counsel for the plaintiffs.

28. Thus, when the suit itself was kept sine die, parties and their advocate were not supposed to attend the proceedings and thus there was no opportunity for them to find out whether the opposite party is alive or dead so as to take necessary steps.

29. In the case of ***Balwant Singh (Dead) Vs Jagdish Singh and others***,¹ the Apex Court while discussing the provisions of bringing legal heirs on record, observed in paragraph 15 that Rule 1 Order 22 of CPC mandates that the death of a defendant or a plaintiff shall not cause the suit to abate if the right to sue survives. In other words, in the event of death of a party, where the right to sue does not survive, the suit shall abate and come to an end. In the event the right to sue survives, the party concerned is expected to take steps in accordance with provisions of Order 22.

30. Order 22 Rule 3, CPC prescribes that where the plaintiff dies and the right to sue survives, then an application could be filed to bring the legal representatives of the deceased on record within the time specified of 90 days. However, Once the proceedings have abated, the suit essentially has to come to an end, except when the abatement is set aside and the legal representatives are ordered to be brought on record by the Court of Competent jurisdiction in terms of Order 22 Rule 9 (3), of CPC together with provisions of Section 5 of the Indian Limitation Act, 1963, An application for setting aside the abatement has to be treated at par and the principles enunciated for condonation of delay under Section 5 of the Limitation Act which apply para materia.

¹ (2010) 8 SCC 685

31. In the case of ***Mithailal Dalsangar Singh and others vs Annabai Devram Kini and others***,² as referred by the First Appellate Court in its impugned judgment, legal heirs brought on record in connected proceedings ensures the benefit for the entire proceedings. Admittedly legal heirs of the deceased plaintiff and the defendant were brought on record in the tenancy proceedings that too by condoning the delay and setting aside abatement, and hence, it cannot be argued that reference by the learned Court to the Mamlatdar was nonest or stillborn.

32. Once such legal heirs were brought on record in the connected proceedings, the same must benefit to all the proceedings wherein it is required to be brought on record. Thus as held in the case of ***Mithailal Dalsangar Singh*** (supra) once an application filed before the tenancy Court is allowed by condoning the delay and set aside abatement it would have the effect of bringing legal heirs of both the parties on record not only in the tenancy proceedings but also in the civil suit. All that what remained to be done is the ministerial act of correcting the index of the parties in the suit which was kept sine die till the disposal of the tenancy issue.

33. Effect of Section 58(2) of the Agricultural Tenancy Act is wide and clear. Once an issue is raised regarding agricultural tenancy, no suit or proceedings shall proceed before a Civil Court until issue of tenancy, is settled, decided, dealt with by competent authority under 2 (2003) 10 SCC 691

the Agricultural Tenancy Act. This means that the civil suit filed between the parties was required to be kept sine die till the disposal of the tenancy issue itself. Thus the tenancy issue referred to the Mamlatdar cannot be considered as independent proceedings. In fact, that the Civil Suit is now depending upon the outcome of the tenancy issue. If the original defendant is declared as an agricultural tenant of the suit property by the competent authority, jurisdiction of the Civil Court would be restricted as far as eviction or passing any restriction of such tenant. In fact, the Agricultural Tenancy Act would give a deemed owner's title to such tenant from the tillers date. Thus the impact of the proceedings before the Mamlatdar are bound to decide about the jurisdiction of the Civil Court to entertain the said suit.

34. Plaintiff specifically disclosed while filing application for bringing legal heirs that since the tenancy issue was taken up by the Civil Court and it was tagged along with the suit, they realised that legal heirs were not brought on record in the suit. However, as observed by the Apex Court in the case of ***Mithailal Dalsangar Singh*** (supra) this was only a ministerial act to be performed by correcting the cause title of the parties in the suit. Effect of condonation of delay and setting aside abatement in the tenancy proceeding would clearly be required to be considered as bringing them on record in civil suit also. However, since the suit was kept sine die, such application was filed only when suit was taken up along

with tenancy issue in view of the change in the jurisdiction of the Mamlatdar to that of the Civil Court.

35. The learned First Appellate Court in minute detail considered this aspect and allowed said appeal thereby permitting the parties to bring on record the legal heirs, which cannot be termed as inappropriate or illegal or perverse. Findings therein are based on the settled propositions of law and therefore cannot be disturbed in the supervisory jurisdiction of this Court. Accordingly, both the petitions must fail and stand dismissed.

36. Rule is discharged. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.