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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 152 OF 2020

WITH

MISC. CIVIL APPL. NO. 553 OF 2023

Versus

1. Mr. Aleixo Domingos Fernandes,
alias Alex Dominic Fernandes
alias Dominic Fernandes,
Son of late Mr. Celestino John Fernandes,
67 years of age, and his wife,

Tereza Fernandes alias
Theresa Fernandes,
58 years of age,
Both Indian Nationals, and
Residents of Shalini Apartments,
Flat no.7, Vikas Nagar,
Wanorie, Pune-411040.

3. Mrs. Maria Felismina Fernandes,
Alias Filomena Mascarenhas,
alias Felismina Mascarenhas,
Daughter of late Mr.Celestino
John Fernandes,
Wife of late Antonio Simao Mascarenhas
alias Simon Mascarenhas
76 years of age,
Indian National, resident of
2000, St. Vencent Street Camp,
Pune-411001.

Dismissed in
view of order dt.
02.03.2023,
passed by Ld.
Registrar (Judl.)
as per order of
Hon'ble Court
dt. 02.02.2023.

4. Mr.Pascal Bruno Mascarenhas
alias Mr.Pascal Simon Bruno Mascarenhas,
Son of late Antonio Simao Mascarenhas,
alias Simon Mascarenhas,
48 years of age,
and his wife

5. Mrs. Clementine Moriais
alias Clementine Mascarenhas
alias Clementina Mascarenhas
44 years of age,
Both Indian Nationals, and

Residents of Flat no.98,
building no.A-3, A wing,
Ravi Park, Wanwari,
Pune-411040.

6. Mr.Savio Dominic Mascarenhas
alias Savio Mascarenhas
Son of late Antonio Simao Mascarenhas
alias Simon Mascarenhas,
47 years of age, and his wife
7. Mrs.Sangeeta Maria Dutta
alias Sangeeta Maria Mascarenhas
alias Maria S. Mascarenhas,
Wife of Mr.Savio Dominic Mascarenhas
37 years of age,
Both Indian Nationals, and
Residents of Flat no.2,
Natraj, S. No.27, Kondhwa, Pune 411048.
8. Mrs. Maria Gonsalves alias
Rosemary Fernandes,
Widow, wife of late
Mr. Bruno Fernandes,
alias Lourenco Bruno Fernandes,
62 years of age, and her son,
9. Mr. Ryan Camilo Fernandes,
Son of late Mr.Bruno Fernandes,
alias Lourenco Bruno Fernandes
24 years of age,
Both Indian Nationals, and

Residents of Flat no.A-12,
Bakau Wolf Housing Society,
Kharalwadi, Pmpri,
Pune-411018.

10. Mrs. Juliana Gomes alias
Juliana Nee Julia Gomes alias,
Julie Martins alias Juliedenis Martins,
Daughter of late Jose Gomes,
Niece of late Ana Eugenia Menezes
62 years of age,
Residing at 3, Topaz CHS Ltd.
Kalina village road, Kalina,
St. Cruz(E), Mumbai 400029,
11. Mrs. Maria Eufemia Conceicao Gomes
alias Maria Eufemia Conceicao Grao
alias Maria Grao alias Maria Eufemia Gomes,
Daughter of late Jose Gomes,
Niece of late Ana Eugenia Menezes
60 years of age,
Resident of 21 / 2A, Green Park,
CHS Ltd., Link road,
Malad West, Mumbai 400064
12. Mr.Dexter Savio De Souza,
Resident of H.No.1 / 133 A,
Gaura Vado, Calangute,
Bardez, Goa **... RESPONDENTS**

Mr. S. S. Kantak, Senior Advocate with Mr. Abhijeet Kamat, Mr. Preetam Talaulikar and Mr. Simoes Kher Ceazer John, Advocates for Petitioners.

Mr. B. D. D'Costa, Senior Advocate with Mr. Rehan Abbasi, Advocate for Respondent Nos. 1 and 2.

Mr. J. J. Mulgaonkar with Ms. Asmita Tirodkar, Advocates for Respondent No. 12.

CORAM:- VALMIKI SA MENEZES, J.

DATED :- 29th February, 2024

ORAL JUDGMENT:

1. Heard Mr. S. S. Kantak, learned Senior Counsel who appears with Mr. Abhijeet Kamat, Mr. Preetam Talaulikar and Mr. Simoes Kher Ceazer John for Petitioners, Mr. B. D. D'Costa, learned Senior Counsel who appears with Mr. Rehan Abbasi for Respondent Nos. 1 and 2 and Mr. J. J. Mulgaonkar who appears with Ms. Asmita Tirodkar for Respondent No. 12.

2. Rule. Rule is made returnable forthwith with the consent of the parties as the matter is being finally disposed of.

3. On concluding the hearing of the matter, the learned Senior counsel appearing for the Petitioner sought an adjournment and requested deferment on the passing of Judgment in this matter to enable the Petitioner to make arrangement for depositing the penalty amount described under Section 35 of the Indian Stamp Act, 1899 i.e. 10 times the Stamp Duty payable. The parties have now agreed upon and consented to the passing of the following order:

- (a) The Memorandum of Understanding (MOU) dated 24/08/2011 is being tendered in evidence by PW1, whose deposition has been recorded by the Trial Court. However, this document has not been admitted in evidence due to the objection raised by the Defendant. Considering the scheme of Section 35 of the Indian Stamp Act, the impugned order cannot be interfered with, but shall be modified to the following extent.

- (b) The Trial Court shall on the next date of the hearing i.e. on 21/03/2024 pass an order to impound the MOU dated 24/08/2011. Since, the Petitioner/original plaintiff has already paid a requisite deficit stamp duty of R. 1,69,900/- (Rupees One Lakh Sixty Nine Thousand & Nine Hundred only) and all i.e. to be deposited now in terms of the Section 35 of the Act and is 10 times the penalty amount, which is calculated to Rs. 16,99,000/- (Rupees Sixteen Lakhs Ninety Nine Thousand only), the same shall be deposited before the Trial Court by the Plaintiff on or before 31/03/2024. It is also to be clarified that the direction given by the Trial Court in the impugned order to that effect shall be modified and now read as “payment of penalty” instead of the words “deficit stamp duty”.
- (c) On the Plaintiff depositing the penalty amount, the Trial Court shall admit the MOU dated 24/08/2011 in evidence and mark the same as an exhibit and proceed with the trial.
- (d) Further, after depositing of the penalty amount, the Trial Court shall forward an authenticated

copy of the MOU dated 24/08/2011 to the Collector, North Goa, in terms of the provision of the Section 38 of the Indian Stamp Act. The Trial Court shall send this document to the Collector within a week from depositing of penalty amount.

- (e) On receipt of the authenticated copy of the MOU dated 24/08/2011, the Collector shall hear the Plaintiff, both on the question of applicability and quantum of the deficit stamp duty and also on the question of imposing quantum of penalty in terms of Section 38 of the Indian Stamp Act. This process shall be completed by the Collector within 2 months from the receipt of the authenticated document from the Civil Court. The Collector shall thereafter communicate his decision to the Civil Court.

4. The impugned order shall stand modified to the above extent and direction. Other than this, the impugned order does not call for any interference of the reasoning contained therein.

5. The petition is disposed of in the above terms. There shall be no order for costs. All concerned to act on an authenticated copy of this order.

VALMIKI SA MENEZES, J.