



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 143 OF 2024

1. Archdiocese of Goa and Daman
With Office at Archbishop's House,
Althinho Goa, Respresented herein by
its Financial Administrator and Procurator,
Fr. Noel D'Costa, 49 years of age,
son of Natividade D'Costa, Residing at
Bishop's House, Altinho, Panaji Goa. ... PETITIONER

Versus

1. Joao Antonio Pereira
Aged 63 years, resident of Muxer,
Bandora, Ponda, Goa.
2. Magdalena Pereira
Aged 60 years, resident of Muxer,
Bandora, Ponda, Goa.
3. Nazareth Tiago Pereira,
Aged 53 years, resident of Muxer,
Bandora, Ponda, Goa.
4. Magdalena pereria, e Monteiro,
Aged 60 years, and her husband
5. Bento Inacio Monteiro,
Aged 64 years, both residents of
ward mata, Panchwadi, Ponda Goa
6. Heroina Pereira e Fernandes,
Aged 54 years, and her husband
7. Cirilo Fernandes, Aged 67 years,
both residents of ward Sivodem,
Village Navelim, Salcete, Goa
8. Santana Pereira e Cabral,

Aged 65 years, and her husband

9. Agnelo Cabral, Aged 67 years,
both residents of ward vagdor,
Bandora, Ponda Goa

10. State of Goa,
Rep. By Collector of South Goa,
MathanySaldhana Collectorate Building, Margao, Goa.

11.Morto Raghunath Naik Gaunekar,
(deceased) by his unknown heirs,

12. Shri. Dev. Purvachari (Temple)
Rep. By president of Managing Committee,
Varod, Bandora, Ponda, Goa

13.Mr. Sanjeev G Naik Gaunekar,
Aged 60 years,

14.Mr. Rajeev G Naik Gaunekar,
Aged 58 years, Both L.R's of
Gopinath Pandurang Naik Gaunekar,
And residents ofH.No. 52/1,
Mussa Varod, Bandora, Ponda, Goa

15.Mr. Inas Coelho,
S/o late Caetano Coelho
Aged 64 years, r/o H.No.n 30,
Muxer, Bandora, Ponda, Goa

16.Mr. Shivaji Rangaji Prataprao Sardessai,
Aged 62 years, son and heir of late Rangaji
Shivaji Prataprao Sardessai, r/o Flat No. S-2,
Ramnatkar Apartments, Upper Bazar, Ponda, Goa.

17.Mrs. Anna Francisca Fernandes,
Aged 70 years, L.R of late Santiago Fernandes,
r/o H.No. 26/A, Muxer bandore, Ponda, Goa

18. Mr. Savio D. Shet Narvekar,
Aged 65 years, and

19.Mr. Ramdas D. Shet Narvekar,

Aged 60 years, Both sons and heirs
of late Damodar Addu Shet Narvekar,
r/o H.No. 41/1, near Purvachari Temple,
Varod, Bandora, Ponda, Goa

20. Yeshodhevai Ganesh Naik Gaunekar,
(deceased) by her unknown heirs

21. Chitambarganesh Naik Gaunekar,
Aged 70 years, r/o H.No. 638,
Next to District Court, Old market,
Margao, Goa.

22. Manikram Naik gaunekar,
Aged about 72 years, Heir of
Rama Giri Naik Gaunekar,
r/o Manaswada, Kundai, Ponda, Goa

23. Mr. Sanjay Dina Mulvi, Aged 50 years,
heir of late Dina Krishna Mulvi,
r/o H.No. 51/1, behind Purvachari Temple,
Mulviwado, Bandora, Ponda Goa

24. Education Department (Government of Goa)
Rep. By Headmaster, Government Primary School,
Varod, Bandora, Ponda, Goa ... RESPONDENTS

Mr. J. E. Coelho Perreira, Senior Advocate with Mr. Pancham
Phadte, Advocate for the Petitioner.

Mr. J. J. Mulgaonkar, Advocate for the Respondents.

Mr. S. Samant, Additional Government Advocate for Respondent
Nos. 10 and 24.

CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 12th June, 2024

ORAL JUDGMENT.

1. Rule.
2. Rule is made returnable forthwith.
3. Heard for final disposal with consent.

4. Mr. Pereira, learned senior counsel for the Petitioner submits that the application for impleadment filed by the Petitioner in Civil Suit No. 09/2022 was rejected only on the ground that the Respondent/Plaintiff objected to such impleadment. He submits that the Petitioner is the owner of part of portion of survey no. 140/1 of Village Bandora, Ponda Goa.

5. The suit is filed basically asking declaration that the Plaintiff is the co-owner of survey no.140/1. He submits that the Petitioner was not joined as a party as Defendant in said suit. Even though, the Chapel which is managed by the Petitioner appears in Form I and XIV in the Occupant's Column. He submits that in order to adjudicate the issue of co-ownership and partitioning of the said properties, the Petitioner is necessary party. He then submits that the application was rejected only on the ground that the Plaintiff objected to it claiming that the Plaintiff is a '*Dominus Litus*' and cannot be forced to litigate against the party, against whom he does not claim any relief.

6. Mr. Mulgaonkar appearing for the Respondent/Plaintiff submit that first of all, the Petitioner failed to show that the Chapel existing in the said property is managed by the Petitioners. Secondly, he claimed that the area of the Chapel is separate and distinct and not connected to the area claimed by the Plaintiff.

7. The suit is filed for declaration of title and for partition of the property bearing survey no. 140/1 of Village Bandora, Ponda-Goa. The prayer in the suit reads that they be declared to be owners in possession of area of 7474 sq.mts. out of survey no. 140/1 of revenue village Bandora, Taluka of Ponda, as depicted in the scale plan annexed to the suit.

8. The Plaintiff admittedly joined the parties/Defendants whose names appeared in the Occupant's Column of survey no. 140/1 except, the Chapel. There is no explanation coming forward from the Plaintiff as to why the Chapel is not joined as party Defendant.

9. The claim is of co-ownership and therefore, the persons occupying the said property jointly under survey no. 140/1 are necessary parties for proper adjudication of the suit.

10. The Petitioner vide their application for impleadment, produced necessary documents including the Sale Deed, Land Registration Records as well as Report of Surveyor to show the area occupied by them in survey no. 140/1. The Plaintiff objected to such application by filing reply only on the ground that the Petitioner is not having any connection with the said Chapel and that Plaintiff cannot be forced to litigate against the party to whom he is not interested to litigate. The Form No. I and XIV shows the names of the Occupants of survey no. 140/1 wherein at serial no.13

it is recorded as “St. Francisco Church”. Admittedly, the Plaintiff failed to join the authorities who are managing the said St. Francisco Church and there is no explanation coming forward, either in the plaint or in the reply, as to why the said Church is not joined as party to the suit.

11. The Petitioner has produced relevant documents which show prima facie connection with the said Chapel/Church and such documents are not at all considered by the learned Trial Court in its order.

12. The impugned order no-where discusses the aspect of necessary and proper party to the suit, *qua* the declaration claimed by the Plaintiff. The learned Trial Court ought to have considered this aspect before accepting the submissions of the Plaintiff with regard to his right as '*Dominus Litis*'. When a party is considered to be a necessary and proper party to the suit, the Court ought to have considered it above the right of the plaintiff so as to decide the issue effectively.

13. The documents placed on record by the Petitioner prima facie shows that the Petitioner is having interest in the said property. Accordingly, the Petitioner is considered to be a necessary party to the suit filed by the Plaintiff for declaration of co-ownership. Accordingly, the impugned order needs to be

quashed and set aside.

14. The impugned order is quashed and set aside. The application filed by the Petitioner for impleading as party Defendant in said suit stands allowed.

15. Rule is made absolute in above terms.

BHARAT P. DESHPANDE, J.