
(1994) 12 BOM CK 0053

In the Bombay High Court

Case No : Civil Revision Application No. 155 of 1994

Anant Bhiku Shirodkar and Another

APPELLANT

Vs

Mrs. Rosalina Fernandes

RESPONDENT

Date of Decision : 14-12-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3
Evidence Act, 1872 — Section 115
Limitation Act, 1963 — Article 25

Citation : (1996) 3 BomCR 694 : (1996) 2 MhLj 262

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : S.D. Lotlikar, for the Appellant; F. Rebello, for the Respondent

Final Decision : Allowed

Judgement

T.K. Chandrashekhara Das, J.—The plaintiffs filed this revision application against the order passed by the Civil Judge, S.D., Quepem dated 12-7-1994 (though in the order it has been mistakenly typed as 1984), whereby an application for impleading some parties in the suit has been rejected by the Court below on the ground of limitation.

2. I have heard counsel for the petitioners and the respondent. The question of limitation as raised in this order is a matter that can be raised by the person sought to be impleaded but not the person at whose instance the impleadment is being made. In fact, the impleadment has been made in view of a plea taken in the written statement that the persons sought to be impleaded are necessary parties. Therefore, the person who took up such plea cannot raise any objection in impleading those persons.

3. The learned Counsel for the respondent has very vehemently argued that the suit against the persons who were sought to be impleaded is barred and the nature of the suit will itself be changed and therefore the trial Court was fully justified in rejecting the application for impleadment.

4. I fully agree with the learned Counsel for the respondent. But this plea could be raised only by those persons other than the respondent herein because it is he who raised in the written statement that issue of joinder of necessary party. Therefore I find no merit in the contentions advanced by the Counsel for the respondent. The impleadment was sought at the instance of the defendant and all other questions which were raised by the counsel for the respondent could have been raised, if they so desired, by those persons who are to be arrayed after impleadment as party. Therefore I find no justification for rejecting the application for impleadment by the Court below.

5. In the result I set aside the order under revision in this application and allow the impleadment of the party.

6. It is further contended by the counsel for the respondent that even though he has raised the plea of non-joinder of parties as early as October, 1985, the impleadment is sought only in the year 1992, roughly about eight years after the filing of the written statement. Though the Lower Court should not have rejected the application on the ground of delay, it was sufficient ground to award some cost against the plaintiffs.

7. Since I am allowing the impleadment in this petition, I order that an amount of Rs. 250/- to be paid as costs by the petitioners to the respondent.

8. Subject to the above directions, the civil Revision Application is allowed.