

(2014) 07 BOM CK 0237
In the Bombay High Court
Case No : First Appeal No. 20 of 2009

Anthony Cardozo

APPELLANT

Vs

Maria Filomena Vaze Rosario

RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Citation : (2014) 07 BOM CK 0237

Hon'ble Judges : A.R. Joshi, J

Bench : Single Bench

Advocate : M.B. Da Costa, Senior Advocate and K. Betquecar, Advocate for the Appellant; G. Shirodkar, Advocate, S.D. Lotlikar, Senior Advocate and G. Xettigar, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

A.R. Joshi, J.—Heard rival submissions for sometime on this First Appeal. After hearing the rival submissions it transpires that the judgment and decree passed by Civil Judge, Senior Division has been challenged before this Court in the present appeal. However, earlier directions were given by this Court for transfer of the said appeal to the concerned District Court under the premise that the pecuniary jurisdiction to dispose off the appeal vests with the District Court. As such, when the appeal reached before the concerned District Court, it was again argued by the parties that in fact in view of the provisions of Section 26B of Goa Civil Courts Act, 1965, the said appeal should have been dealt with by the High Court and not the District Court and under these circumstances again this same appeal came up before this Court and is now fixed for final adjudication.

2. Without going much into the merits as to passing of the judgment and decree by the trial Court i.e. Civil Judge, Senior Division, suffice it to say that then pending suit between the parties being Special Civil Suit No. 789/2003 should not have been proceeded further by the said Civil Judge, Senior Division. This is mainly so in view of the provisions of Section 26A of the Goa Civil Courts Act. Section 26A reads thus:

26A-Transfer of pending suits and bar on the jurisdiction--All suits received or registered u/s 26 and pending before any Court of a Senior Civil Judge immediately before the commencement of the Goa Civil Courts (Amendment) Act, 2004, shall, on such commencement, stand transferred to the District Court of the concerned district and such District Court may proceed to deal with such suit from the stage which was reached before such transfer or from any earlier stage or de novo, as such District Court may deem fit and no Court of any Senior Civil Judge shall entertain, try, dispose off or proceed to hear any matter where the Central Government or the Government of Goa or any officer of the Government in his official capacity, is a party to the proceedings.

Provisions of Section 26A are effective since 16/03/2004. As such, by that time, the original Civil Suit mentioned above was pending before the Civil Judge, Senior Division. In view of the above provisions of Section 26A, it was must for Senior Civil Judge not to proceed to hear the said suit when admittedly Official of the Government was a party in his official capacity. During the arguments, the legal position is fairly conceded by all the Counsel representing the appellants and respondents that Senior Civil Judge should not have proceeded further with the said suit, much less passing any judgment and decree. In view of this legal position the judgment and decree passed by the Senior Civil Judge is non-est and is required to be quashed and set aside.

3. Now the question is on remand which Court to deal with the said Civil Suit. On this aspect, it is also anonymous view of all the Counsel that as per the provisions of the Goa Civil Courts Act and specifically Section 26A, the said Special Civil Suit No. 789/2003 is required to be tried by the concerned District Court. In fact, this is correct legal position and, as such, after setting aside the judgment and decree passed by the Senior Civil Judge, the matter is required to be remanded back to the concerned District Judge for further dealing with the said suit from the stage it had reached before the Senior Civil Judge at the time of the application of Section 26A of the Goa Civil Courts Act. As such, the present appeal is disposed off with the above directions, quashing and setting aside the judgment and decree and directions to the concerned District Judge to deal with the Special Civil Suit No. 789/2003 in view of above directions and dispose it off in accordance with law. In the meantime, all the rival parties are directed to maintain status quo with respect to the suit property, till the matter reaches the District Court for further trial. Under the circumstances of the matter there are no order as to costs.