
(2015) 12 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 763 of 2014

Mario Cotta Pereira

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 05-12-2015

Acts Referred:

Defence of India Act, 1962 — Section 29

Citation : (2016) 1 ABR 685

Hon'ble Judges : K.L. Wadane, J.

Bench : Single Bench

Advocate : S.D. Lotlikar, Senior Advocate and C. Padgaonkar, Advocate, for the Appellant; S. Mordekar, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.L. Wadane, J.—Heard S.D. Lotlikar, learned Senior Advocate appearing for the petitioner, Ms. S. Mordekar, learned Additional Government Advocate appearing for the respondent Nos. 1 and 2 and Mr. B. Rodrigues, learned Advocate for appearing the respondent Nos. 4a, 5a, 6a, 7a, 8a, 9a, 11a to 11d, 12a, 13a, 14a, 15a, 16a, 17a, 18a, 19a, 20a, 21a and 21b, 22a to c, 23a and b, 24b and c, 25a to e, 26a, 27a to e, 28a, 29a to c, 31a & b, 32a, 33a, 34a and b, 35a, 36a and b, 37a, 38a and b, 42a, 43a, 44a, 45a, 46a, 47a, 48a to c, 49a and b, 50a, 51a and b, 52a, 53a, 54a, 55a and 61.

2. Rule made returnable forthwith.

3. Heard by consent of the learned counsel appearing for the respective parties. Ms. Mordekar, learned Additional Government Advocate waives notice on behalf of the respondent Nos. 1 to 3 and Mr. B. Rodrigues, learned Advocate waives notice on behalf of the respondent Nos. 4a, 5a, 6a, 7a, 8a, 9a, 11a to 11d, 12a, 13a, 14a, 15a, 16a, 17a, 18a, 19a, 20a, 21a and 21b, 22a to c, 23a and b, 24 b and c, 25 a to e, 26a, 27 a to e, 28a, 29 a to c, 31 a & b, 32 a, 33a, 34a and b, 35a, 36a and b, 37a, 38a and b, 42a, 43a, 44a, 45a, 46a, 47a, 48a to c, 49a and

b, 50a, 51a and b, 52 a, 53a, 54a, 55a and 61.

4. This Writ Petition is filed by the original plaintiff/petitioner seeking to quash and set aside the order dated 31.10.2014 passed by the Ad-hoc District Judge-I, FTC-I, South Goa, Margao in Civil Suit No. 30/2010 on an application for deletion of the names of the respondents Nos. 4 to 68 at Exh. 103.

5. The parties shall be referred to as per their original status before the trial Court.

6. Brief facts of the case may be stated as follows:--

"In the year 1964, the Administrator of Goa, Daman and Diu, passed an order and thereby requisitioned the property belonging to Joaquim Francisco Roque Santana Cota, of Margao, as per the powers under Section 29 of the Defence of India Act, 1962. After requisition, the State of Goa neither paid any compensation to the Joaquim Francisco Roque Santana Cota during his lifetime or his successors-in-interest nor acquired the property as mandated under the law. The suit property was apparently requisitioned for rehabilitation of persons displaced by acquisition of land for establishment of Military Camp at Navelim. In consequence of the requisition of the suit property, the possession and control thereof, has passed on to the defendant No. 1/respondent No. 1 State of Goa whose interests are represented herein by its Chief Secretary. The petitioner herein filed a suit bearing Special Civil Suit No. 119/1993/A which was subsequently renumbered as Civil Suit No. 30/2010/I for restoration of the suit property. Encroachers were made parties to the suit property."

7. On 31.10.2014, the plaintiff filed an application before Trial Court to delete the names of the respondent Nos. 4 to 68 which came to be rejected. Hence, the present petition.

8. I have heard Mr. Lotlikar, learned Senior Counsel appearing for the petitioner, Ms. S. Mordekar, learned Additional Government Advocate for the respondent Nos. 1 to 3 and Mr. B. Rodrigues, learned Advocate appearing for the respondent Nos. 4a, 5a, 6a, 7a, 8a, 9a, 11a to 11d, 12a, 13a, 14a, 15a, 16a, 17a, 18a, 19a, 20a, 21a and 21b, 22a to c, 23a and b, 24 b and c, 25 a to e, 26a, 27 a to e, 28a, 29 a to c, 31 a & b, 32 a, 33a, 34a and b, 35a, 36a and b, 37a, 38a and b, 42a, 43a, 44a, 45a, 46a, 47a, 48a to c, 49a and b, 50a, 51a and b, 52 a, 53a, 54a, 55a and 61.

9. The respondent No. 40 is the union of India. During the course of arguments, Mr. Lotlikar, learned Senior Counsel states that defendant No. 40 is the Union of India and, therefore, it is a necessary party. Therefore, except defendant No. 40, defendant Nos. 4 to 39 and 41 to 68 may be deleted.

10. Mr. Lotlikar, learned Senior Counsel has argued that the respondent Nos. 4 to 39 and 41 to 68 are the encroachers upon the property in possession of the respondent No. 1. According to Mr. Lotlikar, learned Senior Counsel the plaintiff had filed a suit for restoration of the possession of the suit property, therefore it

is for the State Government to restore the property. The petitioner wants to delete those defendant No. 4 to 39 and 41 to 68, at his own risk.

11. As against this, Mr. B. Rodrigues, learned counsel appearing for the respondent Nos. 44a, 5a, 6a, 7a, 8a, 9a, 11a to 11d, 12a, 13a, 14a, 15a, 16a, 17a, 18a, 19a, 20a, 21a and 21b, 22a to c, 23a and b, 24 b and c, 25 a to e, 26a, 27 a to e, 28a, 29 a to c, 31 a & b, 32 a, 33a, 34a and b, 35a, 36a and b, 37a, 38a and b, 42a, 43a, 44a, 45a, 46a, 47a, 48a to c, 49a and b, 50a, 51 a and b, 52 a, 53a, 54a, 55a and 61. has argued that the defendant Nos. 4 to 39 and 41 to 68 are put in possession by the defendant No. 1/respondent No. 1 as they were displaced due to the acquisition of the land for the purpose of establishment of military camp. So according to Mr. Rodrigues, they are rehabilitated in the disputed property by the respondent No. 1 and that they are in actual possession of the same. Therefore, for the disposal of the suit their presence is necessary, so they are necessary parties to the suit. In the absence of these defendants, it will not possible to adjudicate the disputes between the parties.

12. Considering the rival contentions of the both the sides, if the plaintiff is running risk by deleting those defendants then one cannot compel the plaintiff to continue the defendant Nos. 4 to 39, 41 to 68 as necessary party.

13. According to Mr. Lotlikar, no relief has been claimed by the plaintiff against the defendant Nos. 4 to 39, 41 to 68 and therefore, the plaintiff may be permitted to delete them. In support of his submission Mr. Lotlikar, learned Senior Counsel has relied upon the observation of the Judgment in the case of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, and held at paragraph 15 thus:--

"It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally, that is, by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action."

14. I have gone through the observations of the above cited authority and it appears that it is applicable to the facts of the present case. If plaintiff is running risk to delete certain defendants then he can do so at his own risk.

15. In such circumstances, Writ Petition is allowed. Order passed by the Ad-hoc District Judge, South Goa Margao, below Exh.103 is hereby set aside and the petitioner is permitted to delete defendant Nos. 4 to 39 and 21 to 68.

16. Rule is made absolute in the aforesaid terms.

17. Petition stands disposed of.