



1 S.

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.72 OF 2024

Jeanette Andrea Fernandes

...Appellant

Versus

Yashpal Raikar And Asso. Buildtech Pvt.
Ltd. Thr. its Managing Director Yashpal
Raikar And 11 Ors.

...Respondents

Mr Yogesh V. Nadkarni, Advocate with **Ms. Simran Khadilkar,**
Advocate for Appellant.

Mr. S.M. Walawaikar, Advocate with **Ms. S. Halankar, Advocate**
for Respondent No. 1.

Mr. Nilay Naik, Advocate for Respondent Nos. 2 to 4.

CORAM: VALMIKI MENEZES,J.

DATE: 25th October, 2024

P.C.:

On oral application made by the learned Counsel for the appellant, leave is sought to delete respondents No.5 to 12 from the appeal memo. The reasons cited by the learned Counsel for deletion of these respondents are that these respondents have been added as defendants No.5 to 12 in the suit filed by respondent No.1 for declaration that a gift deed executed by respondents no.3 and 4 (original defendants no.3 and 4) in favour of the appellant (original defendant no.1) is null and void. The said suit is pending disposal before the Civil Court.

2. In the Special Civil Suit No.52/2020/C before the Civil Judge Senior Division at Mapusa-Goa, the appellant had filed a counter-claim against respondent No.1(plaintiff) wherein she sought a declaration that the sale deed dated 07.06.2012 as claimed to have been executed in favour of the plaintiff. This counter-claim came to be rejected under Order 7 Rule 11 of CPC against which the present First Appeal has been filed.

3. The oral application for deletion of respondents No.5 to 12 has been vehemently opposed by Shri Volvoikar, learned Counsel appearing for the respondent No.1. He submits that the order of rejection of the counter-claim passed by the lower Court equally binds the appellant and the respondents sought to be deleted. Since the order operates as a decree and finally decides the counter-claim even in respect of the respondents No.5 to 12, the application for deletion of respondents No.5 to 12 be rejected. He further submits that respondents No.5 to 12 are necessary parties to this appeal and in the event of them being deleted as respondents to this appeal, their rights may be affected.

4. Having considered the rival submissions, I am of the opinion that the respondents No.5 to 12 may be deleted and dropped from this appeal at the risk of the appellant. The outcome of this appeal shall in no way affect the rights of the respondents No.5 to 12 and it is open to the respondents No.5 to 12 to raise all contentions against final decision in this appeal. Liberty to respondents No.5 to 12 to apply in the event any order passed in this appeal would in any manner affect their rights.

5. Consequently, the respondents No.5 to 12 shall stand deleted from this appeal. The necessary amendment in the cause title to be carried out forthwith.

6. Since respondents No.1 and 2 to 4 are represented by their respective advocates, service is complete. Registry to list the appeal and place for admission. Parties are put to notice that the appeal may be disposed of finally at the stage of admission.

VALMIKI MENEZES, J.