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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.586 OF 2023

1. Mr. Mariano Fernandes,  
Son of late Constancio Fernandes,  
Age about 55 years, Married,  
Businessman, Indian National  
And his wife;

2. Mrs. Anamaria Silva Fernandes,  
Age about 54 years,  
Wife of Mr. Mariano Fernandes;

Both presently residing at A-2, 1<sup>st</sup> Floor,  
Raghunath Building, Oppo. Auto Service,  
Vasco Da Gama, Mormugao, Goa, 403802.  
And otherwise residing at House No. 1166,  
Ximer, Candolim, Bardez, Goa. ... Petitioners.

*Versus*

Mr. Tarkeshwar Gupta,  
About 28 years of age, Bachelor,  
Indian National, Business,  
Son of Mr. Sanjay Gupta,  
Resident of Plot No. 17, Sarwal Colony,  
Jammu, Near JMU Public School,  
Jammu Rehari Muhalia,  
Jammu & Kashmir 180005. ... Respondent.

Mr. Abhijeet Kamat, Advocate for the Petitioners.

Mr. Shivan Desai with Ms. Maria Viegas, Advocates for the  
Respondent.

CORAM: DR. NEELA GOKHALE, J.

DATED: 11<sup>th</sup> March, 2026

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. By the consent of the parties, the petition is taken up for final hearing.
2. By way of the present petition, the Petitioners seeks to quash and set aside the order dated 12<sup>th</sup> July 2023, passed by the Civil Judge Senior Division, whereby the application for exclusion of the counterclaim filed by the Petitioners (Original Defendants) in Special Civil Suit bearing No.72/2020/A was allowed. The Petitioners further seeks a direction that the counterclaim filed by the Petitioners to the said suit be restored to the original file.
3. The brief facts in the present case are as under: -
4. The Respondent herein (Original Plaintiff) instituted Special Civil Suit No. 72/2020/A for specific performance, mandatory injunction and permanent injunction under the provisions of the Specific Relief Act, 1963, r/w Section 9 of the Civil Procedure Code, 1908 (CPC), before the Civil Judge Senior Division at Mapusa.
5. According to the Respondent, he, originally from Jammu

and Kashmir, had come to Goa in the year 2017, to explore possibilities of starting a business of hotels and hospitality and to invest in real estate. The Respondent met the Petitioners (Original Defendants), and an 'Agreement for Management of Property' dated 5<sup>th</sup> December 2017 was executed by and between the parties. The said agreement was registered on 5<sup>th</sup> December 2017 itself.

6. By way of the said agreement, it was agreed that the Petitioners would construct some wooden cottage structures in the suit property bearing Survey No. 168/2-A of Village Candolim, to be utilised for operating a hotel/guest house and/or restaurant and the Respondent would be permitted to supervise and control the management and operations of the said premises. Financial terms were also agreed upon by and between the parties, in the said agreement.

7. Due to some exigencies, the Petitioners were unable to construct the structures in time. Hence, the Respondent requested the Petitioners to permit them to use the first floor area of the residential house of the Petitioners, bearing House No.1166/B, consisting of five rooms with attached bathrooms, and located in Survey No.168/2 (part) of Village Candolim for operating a guest house, instead of constructing a wooden structure/cottages in the suit property as per the agreement.

Admittedly, the said five rooms located in Survey No.168/2 (part) did not form part and parcel of the agreement for management of the property. However, the Petitioners agreed to the said proposal. The Respondent herein, thus, agreed to take over the management and operations of the five rooms in lieu of the agreement for management of the property. The five rooms were situated in the House No.1166/B in Survey No.168/2 (part) of Village Candolim. Accordingly, the Respondent started operating the said five rooms as a guest house, under the name and style of Hotel Aljana. Financial terms were again agreed upon.

8. It is the case of the Petitioners that from 5<sup>th</sup> December 2017, till 31<sup>st</sup> December 2019, the Respondent earned revenue from the said five rooms, however, the Respondent did not pay the agreed monthly compensation to the Petitioners.

9. Since the Petitioners were unable to construct the wooden structures in the property at Survey No.168/2-A, a sale deed was executed by and between the parties, whereby the Petitioners transferred all that piece and parcel of property at Survey No.168/2-A in favour of the Respondent against the terms of the management agreement. The said sale deed is admittedly unregistered.

10. It then transpired that the Petitioners failed to perform

their obligation in terms of the said unregistered sale deed, leading the Respondent (Original Plaintiff) to institute Special Civil Suit No.72/2020/C, in the Court of the Civil Judge, Senior Division, seeking specific performance of the unregistered sale deed and incidental reliefs.

11. The Petitioners (Original Defendants) appeared in the suit and filed their written statement cum counterclaim. By way of the counterclaim, the Petitioners sought a direction to the Respondent herein or any persons acting on his behalf, to vacate the said five rooms located on the first floor of the residential house bearing House No.1166/B located in the property bearing Survey No.168/2 (part) in Village Candolim, Bardez, Goa and handover the vacant and peaceful possession of the same to the Petitioners. The Petitioners also sought incidental relief relating to the monetary claim. Thus, the Petitioners raised a counterclaim in respect of the suit property situated at Survey No.168/2 in Village Candolim.

12. It is this counterclaim that the Respondent sought to exclude, by making the application for the said purpose before the Trial Court. By the impugned order dated 12<sup>th</sup> July 2023, the Civil Judge Senior Division allowed the application for exclusion of the counterclaim filed by the Petitioners and declared that the counterclaim stands excluded in terms of

Order VIII Rule 6C of the CPC. The Petitioner has assailed this order dated 12<sup>th</sup> July 2023 in the present Petition.

13. Heard Mr. Abhijeet Kamat, learned Counsel appearing for the Petitioner; Mr. Shivan Desai, learned Counsel appearing for the Respondent; and perused the record with their assistance.

14. Mr. Kamat submits that the Trial Court erred in holding that the counterclaim can be maintained only when the properties in both the suit and the counterclaim are the same. He also submitted that the Trial Court has incorrectly interpreted the law laid down by the Apex Court relating to the admission of counterclaims. He further submitted that the Trial Court failed to take into consideration that the Petitioners were seeking recovery of amounts and possession which is directly traceable and based on the agreement for management of property on which the Respondent also relies on in the said suit. Hence, he submits that the counterclaim is legally tenable and in accordance with the principles set out by the Supreme Court in this regard. He thus prays that the Petition be allowed.

15. Per contra, Mr. Shivan Desai, learned Counsel, contends that the suit property pertains to Survey No.168/2-A, whereas the counterclaim was in respect of Survey No.168/2 (part) of Candolim Village. Mr. Desai placed reliance on the decision of

the Supreme Court in the matter of *Satyender and Others v. Saroj and Others*<sup>1</sup>, as well as the decision of the Supreme Court in the matter of *Jag Mohan Chawla and Another v. Dera Radha Swami Satsang and Others*<sup>2</sup>. Mr. Desai, while relying on these Judgments, submits that the counterclaim must be related to the suit property, which is the subject matter of the suit in which the said counterclaim is filed. He also places reliance on a judgment of a learned Single Judge of this Court in the matter of *Bhagabai wd/o Dajiba Idhole - (Dead) and Anr v. Mathurabai Ramchandra Idhole and Others*<sup>3</sup>. Placing reliance on these decisions of the Supreme Court and this Court, Mr. Shivan Desai contends that the counterclaim is not maintainable, and prays that the Petition be dismissed.

### ANALYSIS

16. The suit for specific performance filed by the Respondent is based on the unregistered sale deed pertaining to the suit property at Survey No.168/2-A. The property has been described in paragraph No.1 of the plaint. Paragraph No.1 of the plaint reads thus: -

“1. That there exist an immoveable property known

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<sup>1</sup> (2022) 17 SCC 154

<sup>2</sup> (1996) 4 SCC 699

<sup>3</sup> WP No.7634/2018 decided on 13.09.2022

"BUTEAPORBUICHEM PORIATO" or "BUTEAPORBUICHEM BHAT" or "GORVANCHEM BHAT" or "CIMER" situated at Ximer Candolim within the jurisdiction of Village Panchayat of Candolim, Sub District of Bardez of the District of North Goa, State of Goa described in the Land Registration office of Bardez under no. 28404 at pages 60og Book 73, consisting of two distinct but adjoining plots forming a combined total area of 1290 sq. mts, and presently surveyed under No.168 sub division 2-A of village Candolim Bardez, Goa, and bounded as under:

North: By Public Road

South: By property bearing survey no. 168/3

West: By Property bearing survey no. 168/2 part

East: By property bearing survey no. 168/2

Herein after for the sake of brevity be referred to as the "Suit Property".

17. The prayer in the suit reads thus: -

“a) The Hon'ble Court be pleased to pass a Judgment, Order & Decree directing the Defendants to specifically perform their part of the Contract and to execute, present, admit execution and be a party to the presentation and registration of Suit Deed Of Sale before the Sub Registrar of Bardez at Mapusa; or to execute a Fresh Deed of Sale, if need be, thereby absolutely conveying the Suit Property to the plaintiff and to comply with all the legal formalities incidental thereto required for the presentation and Registration of the Deed of Sale before the Sub Registrar of Bardez at Mapusa.

*b) The Sub Registrar of Bardez at Mapusa be directed to register the Suit Deed of Sale.*

*c) The Defendants their agents, servants, contractors, representatives or any other persons claiming through or under them be restrained by way of an order of Permanent injunction from selling, transferring, conveying, mortgaging or creating any third party rights or changing the nature of the Suit Property and or doing any construction in the suit property or interfering in the suit property in any manner what so ever.*

*d) The Defendants be ordered to pay the cost of the suit.*

*e) Any other order deem fit and warranted under the circumstances of the case be passed.”*

18. The defence of the Petitioners in the said suit is that the entire transaction of the sale deed stems from the agreement of management entered into by and between the parties. By virtue of the agreement of management, the Petitioners had agreed to construct structures on the property at Survey No.168/2-A, and the Respondents were to manage the said structures by conducting the business of hotels and hospitality in the said structures.

19. For some reason, the Petitioners failed to construct those structures. It transpires that the document purporting to be a sale deed was executed by and between the parties in pursuance of an alleged breach of contract by the Petitioners.

Parallely, the Respondent was occupying five rooms in the residential house of the Petitioners situated at Survey No.168/2 (part) of Village Candolim. The entire arrangement was one continuous transaction. The purported transaction of the sale deed, management of the property as a hotel and occupation of the five rooms in the residential property at Survey No.168/2 (part) appear to be part of one transaction.

20. In these circumstances, the Petitioners cannot be deprived of an opportunity of agitating their defence that the five rooms on Survey No.168/2 (part) were part of one continuous transaction. By way of the counterclaim, the Petitioners have done just that.

21. Order VIII Rule 6A reads thus: -

*“6A. Counter-claim by Defendant-*

*(1) A Defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter- claim is in the nature of a claim for damage or not:*

*Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court.*

*(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.*

*(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.*

*(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.”*

22. A plain reading of the provision above, relating to counterclaim, clearly allows a counterclaim to be set up in respect of a cause of action accruing to a Defendant against the Plaintiff either before or after filing of the suit, but before the Defendant has delivered his defence. Thus, a counterclaim relates to a cause of action and not to a specific property.

23. I have gone through the decision of the Supreme Court in *Satyender* (supra@ pg. 7). In fact, the said decision supports the case of the Petitioners. The Supreme Court in paragraph 24 has observed as under: -

*“24. The legislature permits the institution of a counterclaim, in order to avoid multiplicity of litigation. But then it has certain limitations such as that the counterclaim cannot exceed the pecuniary limits of the jurisdiction of the court, and that such counterclaim must be instituted before the defendant*

*has delivered his defence or before the time limit for delivering his defence has expired. More importantly, such a counterclaim must be against the plaintiff! Evidently, in the present case the counterclaim was not against the plaintiffs. Moreover, as the plaintiffs had not claimed any right over the property and Killa Nos. 6//8 and 23 are not even a part of the suit property described in the plaint by the plaintiffs. Despite the same, such a claim has been allowed against the plaintiffs. In fact, we do not find on record any reply submitted by the plaintiffs against the counterclaim. To be fair such a counterclaim should have been excluded in terms of Order 8 Rule 6-C CPC. Suffice it to state here that the counterclaim set up by the defendants has been rightly rejected by the High Court.”*

24. The facts in *Satyender* (supra@ pg. 7) were distinct from the facts in the present matter, and it is in that context that the Supreme Court has observed that a counterclaim can be set up only against the claims of the plaintiffs. In the facts of the matter in *Satyender* (supra@ pg. 7), the Supreme Court observed that since there was no claim of the plaintiffs regarding Killa Nos. 6//8 and 23, nor was the counter claim filed by the defendants against the plaintiffs. Hence, the defendants were barred from raising any counterclaim on those Killa numbers in view of Order 8 Rule 6-A of the CPC, as it had nothing to do with the plaintiffs. However, the Supreme Court proceeds to finally observe that a counterclaim can be made by the defendant even on a separate or independent cause of

action.

**25.** In view of the factual matrix and the settled law relating to setting up of counterclaims, I am of the view that the counterclaim filed by the Petitioners to the Civil Suit No.72/2020/A, is maintainable as it pertains to one chain of transactions which forms part and parcel of the cause of action to the suit. Hence, the Judgment and Order dated 12<sup>th</sup> July 2023 passed by the Civil Judge Senior Division is quashed and set aside. The Trial Court is directed to take on record the counterclaim of the Petitioners (Original Defendants) in its present form and proceed to conduct the trial.

**26.** Petition is allowed. Rule is accordingly made absolute.

**DR. NEELA GOKHALE, J.**