

CIVIL REVISION APPLICATION NO.24 OF 2003

1. Peter Fernandes,
major, married, and
2. Soccorina Fernandes,
wife of Peter Fernandes,
major, both r/o H.No.
152/A.2, First Floor,
Dangui Colony,
Mapusa, Bardez, Goa. ...Petitioners.

Versus

1. Shri Joaquim Fernandes,
@ Mathew Joaquim Fernandes,
major age, married,
2. Smt. Maria Antonette
Fernandes, wife of Shri
Joaquim Fernandes, major
of age,
3. The Manager, Mapusa
Urban Co-operative Bank
Ltd., (Bank of Goa),
Mapusa, Goa,
4. The Manager, Corporation
Bank, Mapusa Branch,
Mapusa, Goa,
5. The Manager, Central
Bank, Mapusa Branch,
Mapusa, Goa, and
6. The Manager,
Syndicate Bank, Mapusa
Branch, Mapusa, Goa. ...Respondents.

Shri Sudin Usgaokar advocate for the petitioners.

CORAM: F. I. REBELLO, J.

DATE : 31st July, 2003

ORAL ORDER

Heard learned counsel. An application under Order VII Rule 11 of the C.P.C. was rejected on the ground that the issues can be framed after the written statement is filed.

The contention raised on behalf of the petitioners herein was that the suit for partition was barred without there being inventory proceedings. The contention of the petitioners was that the shares of the parties are already crystallized and consequently the question of filing inventory proceedings would not arise. Based on that the trial Court held that an issue would arise and in the circumstances rejected the application.

2. It is no doubt true that an application under Order VII Rule 11 of the C.P.C. can be filed either before filing the written statement and even after filing of the written statement. At that stage what the Court has to do is to look at the pleadings in the plaint as they stand and then proceed to dispose of the matter if the predicates of Order VII Rule 11 had been satisfied. In the instant case, the trial Court considering the rival contentions found that the issues will have to be framed. In fact, the petitioners herein have already filed written statement. It will be open to the petitioners to call on the trial Court to frame an issue on that count and decide the same as a preliminary issue as it will be as jurisdictional issue, if in law they are so entitled.

3. At any rate, this will not be case where this Court must exercise extraordinary jurisdiction, considering the rival contentions.

In the light of that no interference is called for.
Petition rejected.

F. I. REBELLO, J.

mc.