



Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.239/2025**

1) Mr. Narayan Sitaram Mayekar,
(Deceased) Age 80 years, married,
agriculturist

2) Mrs. Laxmi Narayan Mayekar,
Age 75 years, married, housewife

3) Mr. Ramdas Sitaram
Mayekar, (Deceased) through
legal heirs, 72 years

3(a) Mr. Rajat Ramdas Mayekar,
Age 29 years, bachelor, service

4) Mrs. Rameshwari Ramdas
Mayekar, Age 68 years, married,
housewife

5) Mr. Prakash Sitaram Mayekar,
Age 68 years, married, retired

6) Mrs. Priya Prakash Mayekar,
Age 64 years, married, housewife

7) Mr. Govind Sitaram Mayekar,
Age 61 years, married, business

8) Mrs. Gayatri Govind Mayekar,
Age 58 years, married, housewife

9) Mr. Suresh Sitaram Mayekar,
Age 55 years, Bachelor, service

All R/o. H. No. 472,
Chichula, Deulwada,
Dhargalim, Pernem Goa.

... PETITIONERS

Versus

1) Ladu Dattaram Parab, (Deceased)
through legal heirs

1(a) Mr. Nakul Ladu Parab, Age 61 years,
married, retired, (Deceased)

1(a) (i) Mr. Omkar Nakul Parab, Son
of late Nakul Ladu Parab, Age 27
years, bachelor,

1(a)(ii) Mr. Anish Nakul Parab, Son of
late Nakul Ladu Parab, Age 22 years,
bachelor,

Both residents of Chichola Dhargal,
Near Primary School, Pernem

1(b) Mrs. Savita alias Namrata Nakul Parab,
Age 56 years, married, housewife

Both residing at Chichola Dhargal, Near
Primary School, Pernem

1(c) Mr. Shamsundar Ladu Parab, Age 57
years, married, service

1(d) Mrs. Sujata alias Shivani Shamsundar
Parab, Age 52 years, married, housewife

Both R/o. Chicula, Dhargalim, Pernem Goa,

2) Mr. Shantaram Dattaram Parab, Age 80
years, married, agriculturist

3) Mrs. Shantabai Shantaram Parab, Age 75
years, married, housewife

Both residing at Chichola Dhargal, Near
Primary School, Pernem

4) Mrs. Rukmini Pandurang Parab,
Age 68 years, widow, housewife

5) Mr. Sandeep Pandurang Parab, Age 48
years, bachelor, service

6) Mr. Prasad Pandurang Parab, Age 46
years, bachelor, service

All residents of H. No. 613/B, Chichula
Dhargal, Near Rastroli Temple, Pernem, Goa
- 403513. 7 to 10 Legal Heirs of Late

Pandurang Dattaram Parab,

7) Mrs. Vassuda Vinayak Parab, Age 66 years, widow, housewife, R/o. Khadpaband, Ponda-Goa,

Legal heirs of Vinayak Dattaram Parab, All legal heirs of Dattaram Ladu Parab,

8) Mr. Yeshwant Babu Mayekar, Age 79 years, married,

9) Mrs. Meena Yeshwant Mayekar, Age 76 years, married,

Both R/o. Gudegal, Kirpal, Dabal, near Fomento Mines, Dharbandora-Goa,

10) Mrs. Krutika Krishna Mayekar, Age 66 years, widow, housewife

11) Mrs. Siddhi Krishna Mayekar, Age 38 years, married, housewife

12) Mr. Chetan Krishna Mayekar, Age 35 years, married, service

All R/o. D'mellowado, Canca, Near Vishwati Temple, Bardez, Goa

13) Mrs. Vithabai Pandurang Parab, Age 80 years, widow (Deceased)

14) Mr. Chandrakant Pandurang Parab, Age 66 years, married,

15) Mrs. Chandrakala Chandrakant Parab, Age 62 years, married, housewife

All R/o. H. No. 63, Near Rastroli Devasthan, Kumbharwada, Chandel, Pernem-Goa,

16) Mr. Vithu Vishram Gawas, Age 54 years, married, service

17) Mrs. Rukmini Vithu Gawas, Age 62 years, married, housewife

Both R/o. H. No. 63, Kumbharwada,

Chandel, Pernem-Goa.

18) Tukaram G. Mayekar,
(Deceased) through legal heirs

19) Mrs. Nirmala Vinayak Gad,
Age 77 years, widow

20) Mr. Suraj V. Gad,
Age 50 years, married, service

21) Mrs. Bindiya Suraj Gad,
Age 45 years, married, housewife

All residing at Shirvodem, Navelim, Goa,

22) Mr. Eknath Dhuri,
Age 61 years, married, business

23) Mrs. Sapna E. Dhuri,
Age 45 years, married, housewife

Both residing at Anand Dhara Building, 1st
Floor, Margao-Goa,

24) Mrs. Rameshwari R. Prabhudesai,
Age 59 years, widow, housewife

25) Mr. Rahul R. Prabhudesai,
Age 42 years, married, service

Both residing at Ravanfond, Navelim,
Salcette, Goa

26) Mrs. Rahi R. Prabhudesai
Age 35 years, married, service

27) Mr. Ratish K. Sawant,
Age 40 years, married, service

28) Mrs. Rathi R. Sawant,
Age 37 years, married, service

All R/o. Shirvodem, Goa

29) Mr. Madhukar V. Parab,
Age 69 years, married, retired

30) Mrs. Madhavi M. Parab,
Age 64 years, married, housewife

Both R/o. Mapusa-Goa,

31) Mr. Chandrakant Vishnu Shet Mayekar
(Deceased) through legal heirs

31(a) Mr. Amit Chandrakant Shet
Mayekar, Age 38 years, married,
service

31(b) Mrs. Varsha Amit Shet
Mayekar, Age 35 years, married,
service

Both residing at Australia.

31(c) Mrs. Akshata Ajinkya Gaus
Desai, Age 33 years, married, service

31(d) Mr. Ajinkya Gaus Desai, Age
38 years, married, service

32) Mrs. Anuradha Chandrakant Mayekar,
Age 73 years, married, housewife (Deceased)

All R/o. H.No. 8/4/02, Opp. Fatima
Church, Margao, Goa,

33) Mr. Satish Y. Sawant, Age 48 years,
married, service

34) Mrs. Vaishali S. Sawant,
Age 44 years, married, housewife

Both residing at Khorlim, Mapusa-Goa

35) Mr. Ashok Krishna Kerkar,
Age 61 years, married, service

36) Mrs. Aswini A. Kerkar,
Age 57 years, married, housewife

Both residing at Mumbai.

... RESPONDENTS

Mr. Sudesh Usgaonkar, Senior Advocate with Ms. Cidalia Lobo,
Advocate for the Petitioners.

Mr. J.J. Mulgaonkar with Ms. S. Parulekar and Ms. Divyabharati
Naidu, Advocates for Respondent Nos.4 and 5.

CORAM: VALMIKI MENEZES, J.

Reserved on: 20th AUGUST 2025
Pronounced on: 2nd SEPTEMBER 2025

JUDGMENT :

1. Heard.
2. Rule. Rule is made returnable forthwith at the request of and with the consent of the learned counsel of the parties.
3. This Petition impugns the Orders dated 24.01.2025 passed by the Ad-Hoc District Court, Panaji Goa, on an application for amendment of the Plaint (Exh-49) and an application for impleadment (Exh-48) filed by the Petitioners, the Appellants therein in Regular Civil Appeal No.82/2023.
4. The petitioners are original Plaintiffs in Regular Civil Suit No.51/2011 in the Court of Civil Judge Junior Division at Pernem, filed against the Respondents/original defendants, for declaration of ownership of the suit property. The suit property as is described in the plaint is property surveyed under no.529/22 of Village Dhargalim Pernem, having an area of 1,625 sq.mts., registered in the Land Registration Office under Inscription no.14636 at page 18 of book 21 and Described under no.361 page 35 of Book B2 (old) and for permanent injunction restraining the Defendants from interfering with the said property.

5. The Defendants contested the suit by filing their Written statements; the Defendant No.1 admitted the case of the Plaintiffs; the Defendants No.6-10, 22 and 23 denied the case of the Plaintiffs claiming possession of the suit property. Subsequently vide Judgment and Decree dated 09.06.2023, the Civil Court dismissed the suit by holding that the Plaintiffs failed to rebut the presumption of correctness of the entry in the Record of Rights in favour of the deceased father of the Defendants in respect to the suit property, it further held that documents relied by the Plaintiffs do not establish relation to Land under survey no.529/22.

6. The Plaintiffs challenged the judgement and decree dated 09.06.2023 in Regular Civil Appeal No.82/2023, in Court of Ad-Hoc District Judge, at Panaji; During the pendency of the appeal, the petitioners filed an application for temporary injunction on 26.04.2024, against the Defendants and persons claiming through Defendant No.6, who the plaintiffs alleged, forcibly entered the suit property, and demolished the existing old compound of boulders, constructed a wall of laterite stones encircling the suit property and dug a trench below the surface level; The application also alleges that the persons claiming through defendant no.6 excavated land in other areas of the suit property, and on the Plaintiff no.5 objecting, the said persons assaulted him causing hurt and injuries.

7. On hearing the parties on this application, vide order dated 10.05.2024, the Appellate Court ordered status quo to be maintained. The Plaintiffs aver that they engaged the services of a

surveyor Mr. Shiva Naik, to survey the illegal development carried out, who surveyed the entire property and located the property described under Description No.361 in the Land Registration Records and concluded that it comprises of sub-division 1 to sub-division 26 of survey no.529. The plaintiffs claimed that as against the report of the earlier surveyor Mr. Mahadev Tuenkar, who identified the property described under No.361 in the Land Registration Records corresponds entirely to only survey no.529/22.

8. Thereafter, the plaintiffs filed an application for impleadment of parties as defendants no.22 to 33 to the suit, the parties sought to be added being co-owners of the property comprising of sub-division 1 to sub-division 26 of survey no.529, which the plaintiffs claimed, now corresponded to Description No.361; The plaintiffs also filed an application for amendment of the plaint on 02.09.2024 to describe the extent of the larger property out of which the suit property was only a part. The amendment sought to be incorporated to the plaint stated that the property described under Description no.361 is to be referred as the “said property” which is inscribed under no.14636 is now surveyed under sub-division 1 to 26 of survey no.529. The property surveyed under No.529/22 forms part of the said larger property; Further, the plaintiffs sought to amend the plaint by incorporating that 1/3rd of the said property, is inscribed under No.7040. The plaint was further sought to be amended to incorporate the subsequent event of demolition of the compound wall and details of the incident which took place between 19.04.2024 and 26.04.2024. the Defendants opposed the said

application on the ground that subsequent event cannot give fresh cause of action as it changes the nature of the suit by bringing events after the disposal of the suit.

9. By order dated 24.01.2025, the Civil Court dismissed the application at Exhibit-48 on the ground that the parties proposed to be impleaded as parties are neither necessary nor proper parties, in whose absence an effective decree cannot be passed by the Appellate court and on the same day vide a separate order dismissed the application at Exhibit-49 on the ground that the proposed amendment is based on a different cause of action against different persons and further held that if the application for amendment is allowed, it would change the nature of the Suit and would also cause mis-joinder of cause of action against the existing defendants.

10. It is the submission of Shri Sudesh Usgaonkar, learned Senior Advocate for the petitioners that the amendment sought to be incorporated to the plaint by bringing on record paragraphs 6(a) to 6(l) are events which have taken place during pendency of the appeal, between 19.04.2024 and 26.04.2024. The amendment was necessitated to bring on record subsequent events and as a consequence, it was necessary, instead of filing a separate suit against the persons interfering with the suit property, to seek their impleadment as defendants no.34 to 36. He further submits that subsequent to the incident which took place on 19.04.2024, and after the Appellate Court granted an order of status quo on 10.05.2024, the services of a Surveyor were engaged, to prepare a report on the encroachments on the suit

property which took place after 19.04.2024, and it is in the course of inspecting and surveying the property, and upon considering the title documents of the plaintiffs and the survey records, the new surveyor, Shiva Naik identified and located the property described under No.361, in the Land Registration Records as the one comprising sub-division 1 to sub-division 26 of Survey No.529, for which he prepared a report. It is on this basis that the amendment was sought.

It is further argued that though the application does not contain separate averments as to why, despite due diligence, the plaintiffs were unable to incorporate these amendments during the course of the suit before the Trial Court, these averments are contained in the amendment sought to be incorporated itself, more specifically in paragraphs 4(k) to 4(l) of the draft amendment. It is submitted that the reasons contained therein demonstrate, that despite due diligence, the correct description of the suit property in relation to its original title were discovered for the first time when the new Surveyor Shiva Naik prepared his report. It is further submitted that instead of filing yet another suit to incorporate the correct title and seek reliefs against the persons now interfering with the suit property, since the interference was a subsequent event during the pendency of the appeal, there need not be multiplicity of suits on the said title, and it would be permissible, in these circumstances to allow impleadment of the persons now interfering in the plaint, and allowing subsequent events to come on record.

It was then submitted that since the larger property corresponding to Description No.361, is now found to cover sub-division 1 to 26 of Survey No.529, the co-owners of the additional survey numbers incorporated in the amendment were sought to be impleaded in the application under Order 1 Rule 10, CPC to the plaint as defendants no.22 to 33. He relied on *Notified Area Commiittee Buria, Tehsil, Jagadhri v/s.Gobind Ram and Ors (Reg. Second Appeal No.98 of 1953 dated 28th January, 1959)*. He further submitted that the plaintiffs had examined a Surveyor Mahadev Tuenkar who had opined that the suit property comprising Description No.361 corresponds to Survey No.529/22 admeasuring 1625 sq.mtrs. whereas now, the amendment sought to be incorporated claims the property no.361 corresponds to a much larger area bearing sub-divisions 1 to 26 of Survey No.529, which is a complete change in suit property, which is impermissible.

11. Opposing these submissions, Shri J. J. Mulgaonkar, learned advocate for the respondents submitted that allowing the application for amendment of the plaint would effectively allow the plaintiffs to incorporate a new cause of action, and on that basis also expand the scope of the suit and of the area of the suit property. He further submits that the amendment would completely derail the defence set up by the respondents; It was further submitted that the application for amendment and for impleadment does not contain any averments to justify the grant of amendment as the requisite pleadings of showing due diligence are totally missing therein. Reliance was placed on the judgment of *Union of India V/s Ibrahim Uddin and Another (2012) 8 SCC*

148 to submit that the documents which would be produced pursuant to amendment being granted would amount to taking fresh evidence on record and completely change the complexion of the suit; He further submits that allowing such an amendment and taking title documents on record would amount to allowing the plaintiff to remove the lacuna in the evidence, which an Appellate Court is not empowered to do. Further reliance was placed on *Asian Hotels (North) Ltd. v/s. Alok Kumar Lodha & Ors. - (2022) 8 SCC 145*.

12. The question that falls for determination in this petition is whether, the amendment sought to be incorporated in the plaint at the stage of appeal, is barred by the Proviso to Rule 17 of Order 6 of CPC; And further, whether a case has been made out to grant impleadment of defendants no.22 to 33 and 34 to 36 to the plaint.

13. While it is true that the application for amendment consists of just five paragraphs, which in themselves may not contain the averments which constitute facts to conclude that despite due diligence, the plaintiff could not have raised the amendment before the commencement of the trial, the circumstances under which the application was filed, are certainly contained in the draft amendment, which is incorporated in the amendment application itself. Prior to the amendment application, an application for temporary injunction was in fact filed by the petitioners on 26.04.2024. In this application, the petitioners have averred the subsequent events between 19.04.2024 and 26.04.2024, which lead to filing the application. In that

application, the petitioners averred that some persons acting and claiming through the defendants entered the suit property and demolished a compound wall therein and later excavated a trench along its periphery in an attempt to develop the same. The petitioners also averred that the petitioner no.5 and 7 were attacked by these persons when they attempted to take photographs, and petitioner no.5 suffered injuries from the assault and was treated at Goa Medical College.

These constitute subsequent events which were already pleaded in the application for temporary injunction and documents, which consisted of photographs, hurt certificates and police complaints, were already relied upon with the application. After the respondents filed their reply, the Court heard the parties and directed the respondents to maintain status quo in respect of the property, and not to alter the nature of the property. These very same events have been sought to be incorporated, as subsequent events by way of amendment to the plaint, pending the appeal in paragraphs 6(a) to 6(j) of the draft amendment. These being subsequent events, do not, in that sense constitute a fresh cause of action but incorporate fresh incidents of encroachment and interference with the property, by the defendants. The three persons who were with defendant no.6 during the incident, were sought to be impleaded as defendants no.34 to 36, as part of the subsequent events. To this extent, the Proviso to Rule 17 of Order 6, CPC could not have precluded the amendment of the plaint. To that extent, the impugned orders passed by the Trial Court dated 24.01.2025 must necessarily be set aside, as the Trial Court has considered the entire amendment,

instead of considering the aforementioned paragraphs incorporating subsequent events as events which did not exist, during the trial of the suit.

14. The second part of the amendment, which is sought to be incorporated from paragraph 6(k) to 6(l) constitute the events that took place after 10.05.2024, when the status quo order was passed; These facts include the fact that the plaintiffs sought assistance of their Surveyor Mahadev Tuenkar, who had earlier deposed in the suit on the extent of the suit property and correlating its title documents, who, as averred in the amendment expressed inability to inspect the encroachments in the suit property, being pre-occupied with other work. It was averred in the amendment that the plaintiff then called upon another Surveyor, Shiva Naik who inspected the suit property and the development therein and prepared a report. There in it was also averred that whilst surveying the property and locating the same, this Surveyor, concluded that the property originally described in the title stated in the suit under Description No.361, in the Land Registration Records, actually comprised of sub-division 1 to sub-division 26 of Survey No.529. These facts are stated in the draft amendment in paragraphs 6(k) to 6(l) which are again subsequent events and ought to have been allowed to be incorporated in the plaint. To this extent, the question of due diligence would not come in the way of the plaintiffs.

15. The amendments sought to be incorporated in paragraph 1 of the plaint essentially state that after the new Surveyor Shiva Naik observed in his report that the property described under

No.361 in the Land Registration Records corresponds to sub-division 1 to sub-division 26 of Survey No.529, the Description of the original property no.361 did not change, however the extent of this property in the new surveys was sought to be amended to incorporate sub-divisions 1 to 26 of Survey no.529. The suit property as described in the original plaint continues to be survey no.529/22, hence there is no change in the extent of the suit property or its description which is found in paragraph 1 of the plaint. It is only the fact that was now noticed by the new Surveyor, that is sought to be incorporated, more by clarification, to state that the extent of the property under Description No.361 is not restricted to only Survey no.529/22 but extends to 26 sub-divisions i.e. Sub-division 1 to 26 of Survey No.529.

16. If one peruses the Written Statement, the contents of paragraph 1 of the plaint where the suit property is described was admitted by defendant no.1, however the defendants no.6 and 7, and 8 to 10 denied the identity of the suit property. In these written statements however, the defendants do not claim any original title based on inscription in the Portuguese Records but claim title on the basis of the survey record, stating that they are in possession of the suit property, which in the plaint was restricted to sub-division no.22 of Survey No.529.

17. From the above pleadings, it is clear that by incorporating what the plaintiff now claims is the correct extent of the property under Description No.361, to correspond to 26 sub-divisions instead of only sub-division 22 would not in any manner derail the defence taken by the defendants, nor would it change the

extent of the suit property. It only clarifies, at the most, the extent of the property under Description No.361 to cover 26 subdivisions of Survey No.529.

18. The next question that needs to be addressed is whether the amendment now sought to be incorporated could have been incorporated as a fact, in the pleadings, at the time the plaint was filed. The averment in the draft amendment (though not stated in the amendment application) does state that it was for the first time, based upon the new Surveyor Shiva Naik's report, and on his opinion, that it came to the plaintiffs knowledge that the Description under No.361 actually corresponds to 26 subdivisions, besides the suit property under sub-division 22 of Survey No.529. These averments themselves demonstrate that despite due diligence, the plaintiff was not aware of the extent of the property, though the opinion of the earlier surveyor Mahadev Tuenkar, suggested the extent was only to sub-division 22 of Survey No.529. That was an opinion of the Surveyor, and it is always open, based on such expert opinion to correct the same, if such material comes to knowledge of the plaintiff at a later date, provided that the amendment sought to be incorporated does not materially alter the entire nature of the suit. In the present case the amendment only seeks to clarify the extent of the "said property" and not the suit property, which is still restricted to Survey No.529/22. These facts, as averred in the draft amendment, came to the knowledge of the plaintiffs for the first time after May 2024, subsequent to the grant of status quo order, and through the new Surveyor Shiva Naik; These were obviously not within the knowledge of the plaintiffs, as the amendment

sought to be carried out is based upon the opinion and report of the Surveyor. No prejudice would therefore be caused to any of the parties if the amendments were allowed.

19. *Union of India v/s. Ibrahim (supra)*, cited by the respondents is a judgment rendered by the Supreme Court on the provisions of Order 41 Rule 27, CPC. These provisions do not deal with the incorporation of an amendment to the plaint based on subsequent events, through which the extent of title came to the knowledge of the plaintiffs. That judgment was dealing with the powers of the Appellate Court to allow documents to be produced and witnesses to be examined, in an appeal, and not to an amendment to the plaint. What documents would be relied upon and how proved, would be questions to be determined by the Court at a subsequent stage. This can be dealt with after pleadings are complete.

20. Whilst the finding in the impugned order that there is no statement on the aspect of due diligence in the application, may be partly true, the fact remains that prior to the amendment application, all the events sought to be incorporated, which were subsequent events were pleaded in an application for temporary injunction, and the question of the opinion of the new Surveyor Shiva Naik on the title coming to the knowledge of the plaintiffs, also being a subsequent event, which is pleaded in the draft amendment, if considered, would itself constitute the averments of due diligence and the Proviso to Order 6 Rule 17, CPC. These facts were all part of the record and known to the respondents as the application for temporary injunction had been contested.

Approaching the application for amendment in a narrow and pedantic manner, when the averments as to due diligence are found incorporated in the draft amendment itself, would work injustice to the petitioners. The acts that constitute interference with the suit property, on the basis of which status quo order was granted are sought to be incorporated as subsequent events, and in that sense ought not to be looked at as an independent and fresh cause of action. Subsequent events can always be incorporated by way of amendment and need not be always taken as a fresh cause of action from which a new suit has to be filed. Where the parties are practically the same, the subject matter of the suit is the same property under Survey No.529/22, the plaintiffs should not be driven to file multiple proceedings, which can give rise to conflicting decrees. These questions could be adequately dealt with in the same suit, on the original cause.

21. For the reasons stated above, the impugned order dated 24.01.2025 dismissing the application for amendment at Exh.D-49 on the file of the Ad-hoc District Judge-II, in Regular Civil Appeal No.82/2023/FTC-II, is quashed and set aside and application at Exh.D-49 for amendment of the plaint is allowed. Consequently, the order dated 24.01.2025 dismissing the application for impleadment of additional parties at Exh.48 is also quashed and set aside and the application at Exh.48 before the Appellate Court is allowed. Since the parties named in the application at Exh.48 for impleadment of defendants to the Suit/respondents in the Appeal is allowed, the newly impleaded parties would be required to be notified and given an opportunity to file their Written Statement to the amended plaint; So also, the

present respondents, who are defendants in the Suit shall also be given an opportunity to file their Additional Written Statement. It is left to the Appellate Court, to decide, based on the facts of the case, whether further evidence would be recorded on its own or after the pleadings are complete, whether it may direct the original Trial Court to record such evidence on the amended pleadings.

22. Rule is made absolute in terms of prayer clause (a) and (b) to the petition.

VALMIKI MENEZES, J.