



Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 85 OF 2025**

1. Mr. Nazario Sebastiao Pinto & anr. ... Petitioners

Versus

1. Mrs. Maria Zelia Filomena Maura ... Respondents
Mascarenhas Portugal & Ors.

Mr. J. J. Mulgaonkar, Advocate with Ms. Divyabharati Naidu,
Advocate for the Petitioner.

Mr. Shivan Desai, Additional Government Advocate for with
Ms. Riya Amonkar, *Advocate for Respondent Nos. 2 to 7.*

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 19th AUGUST 2026
PRONOUNCED ON : 25th AUGUST 2026

ORDER

1. The Petitioner impugns Order dated 25th November 2024, passed by Civil Judge, Senior Division at Margao, vide Exhibit 245 in Regular Civil Suit No. 578/2010/A, whereby the Petitioners' application seeking amendment in written statement and for introducing counter claim, came to be rejected.

2. The Petitioner is the defendant in the suit which is instituted in the year 2004 seeking a declaration that the plaintiffs are co-owners of suit property and that Deed of Sale dated 5th September 1994 executed

by sister of the plaintiff in favour of defendant no. 10, is null and void. The suit property was originally owned by Mr. Pedro Joaquim Carlos Mascarenhas and his wife Mrs. Maria, who passed away leaving behind seven children. The plaintiff no. 1 and Mrs. Maria, are out of seven children. Upon death of Mr. Pedro and his wife, Inventory Proceeding No. 18640/1970/II was instituted before the Comarca Court of Salcete at Margao, for partition and inheritance of couple. The present suit property was enlisted in that inventory. The inventory was disposed of vide Judgment and Order dated 28.01.2020, whereby allotment of suit property was made along with other properties. In present suit, plaintiffs are raising challenge to the Partition Deed dated 22.08.1967 whereby, Mrs. Maria is alleged to have acquired title to the property. It appears that Mrs. Maria executed Deed of Sale dated 05.01.1994 in favour of defendant no. 10.

3. Insofar as inventory proceeding instituted upon death of Mr. Pedro and his wife are concerned, indisputably, the suit property was listed in the inventory and the suit property is culminated in shares being allotted to all the children including the plaintiff. The defendant no. 10 had neither intervened in the inventory proceeding nor sought delisting the suit property from the inventory although he had knowledge about the inventory proceedings since 1994 itself. In this backdrop, the Petitioner/defendant no. 10, filed application at Exhibit

245 seeking amendment in the written statement to bring on record subsequent events that took place during pendency of the suit. So also, introduced the counter claim seeking a declaration of nullity of the chart of allotment made in the Inventory Proceedings. The Trial Court, after considering the rival submissions, rejected the application basically for the reason that the Petitioner/defendant no. 10 acted with complete lack of diligence. He slept over his right since 1994 till 2024 and felt that amendment application is belatedly filed.

4. Mr. J. J. Mulgaonkar, learned Advocate appearing for the Petitioners, would submit that the Trial Court failed to exercise jurisdiction under Order VI Rule 17 of the Civil Procedure Code, 1908 ('CPC') particularly when amendment was on the basis of subsequent events of filing of this suit. The amendment was absolutely necessary for adjudication of the dispute in the suit and the facts sought to be introduced by way of amendment were necessary to decide controversy between the parties. The Petitioner cannot be non-suited only because he did not intervene in the Inventory Proceedings, which were alleged to be perverse and arbitrary and it does not preclude him from challenging the outcome of such inventory proceedings.

5. *Per contra*, Mr. Shivan Desai, learned Counsel appearing for Respondent Nos. 2 to 7, submit that the suit is pending since 2004.

The application for amendment was filed at the end of the trial when parties were to proceed for final arguments. The Trial Court has rightly rejected the application after recording elaborate reasons for such decision which need not be interfered invoking writ jurisdiction of this Court under Article 227 of the Constitution of India.

6. Having considered submissions advanced by learned Advocates appearing for respective parties and upon perusal of the material tendered and submitted before this Court, this Court finds that the suit instituted in the year 2004 has reached the stage of final hearing. The Petitioner made application for amendment at a belated stage. It is trite that the application for amendment in written statement ought to be liberally construed. However, the counter claim sought to be introduced by way of amendment cannot be entertained once the issues are framed and particularly, in respect of cause of action that arose after tendering of the defence. A reference can be given to the observation of Hon'ble Supreme Court in the case of **Ashok Kumar Kalra vs. Wing Cdr. Surendra Agnihotri & Ors.**¹.

7. A perusal of the proposed amendment indicates that Petitioner wants to bring on record the events that occurred during pendency of suit particularly in relation to Inventory Proceedings No.

¹ (2020) 2 SCC 394

18640/1970/II and C.M.A. No. 272/2021/II. All such facts are part of the Court proceedings. If such facts are taken on record, that may assist the Court to pass a comprehensive order without causing prejudice to plaintiffs.

8. Learned Advocate appearing for the Petitioners, on instructions, undertakes that the Petitioners would not lead further evidence in pursuance to facts to be introduced by way of the proposed amendment.

9. In this backdrop, this Court finds that insofar as proposed amendment to incorporate the facts pertaining to Inventory Proceedings No. 18640/1970/II and C.M.A. No. 272/2021/II as stipulated in paragraph 2 of the application, the amendment can be allowed subject to the condition that it will not entitle Petitioners to record further evidence or any way halt the proceedings in the suit.

10. Insofar as the amendment to introduce counter claim is concerned, this Court finds that when the suit has reached at the final stage, counter claim cannot be permitted in light of the observation of the Hon'ble Supreme Court in **Ashok Kumar Kalra** (supra).

11. In result, the Writ Petition is partly allowed.

12. The Petitioners' application vide Exhibit 245, is partly allowed. The impugned Order dated 25th November 2024 passed by learned Civil Judge Senior Division at Margao, in Regular Civil Suit No. 578/2010/A below Exhibit 245 is modified. The Petitioner/Defendant no. 10 is permitted to amend the written statement to the extent of proposed amendment as stipulated in paragraph No. 2 of the application. However, amendment to the extent it seeks introduction of the counter claim, stands rejected.

13. Needless to state here, that Petitioners shall be at liberty to introduce the additional facts as stipulated in paragraph 2 of the application without further right to record evidence and parties shall proceed for final hearing after the plaintiff files his counter, if any, against facts introduced in written statement by the amendment.

14. Writ Petition is disposed of.

S. G. CHAPALGAONKAR, J.