

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NOS.143 AND 144 OF 2014.

WRIT PETITION NO. 143 OF 2014.

1. Shri Shankarrao Dattatray Patil, 75 years of age, married, agriculturist, Indian National, Residing at H. No. 74, Nanus, Valpoi, Sattari, Goa.
 2. Smt. Snehalata Shankarrao Patil, Wife of Shri Shankarrao D. Patil, 72 years of age, Housewife, Residing at H. No. 74, Nanus, Valpoi, Sattari, Goa, through her duly constituted Attorney Shri Shankarrao Dattatray Patil, H. No. 74, Nanus, Valpoi, Sattari, Goa.
 3. Shri Vijaykumar Shankarrao Patil, son of Shri Shankarrao Dattatray Patil, 44 years of age, unmarried, business, Indian National, residing at H. No. 74, Nanus, Valpoi, Sattari, Goa.
 4. Shri Sadashiv Dadoba Mandalik, son of Shri Dadoba Mandalik, aged 79 years, married, agriculturist, Indian National, residing at Nagala Park, Kolhapur through her duly constituted Attorney Shri Shankarrao D. Patil, Residing at H. No. 74, Nanus, Valpoi, Sattari, Goa.
- Petitioners.

Versus

1. Shri Shaikh Abdul Razak, son of Shaikh Karim, retired, 71 years of age, Indian National, Residing at H. No. 61, Nanus, Valpoi, Sattari, Goa.

2. Shri Shaikh Abdul Majid @ Xec Abdul Mogid, son of Shaikh Ismail retired, 60 years of age, Indian National, Residing at H No. 167, Nanus, Valpoi, Sattari, Goa.
3. Smt. Fakrunissabi @ Coirunnissabi, widow of Shaikh Sharif, aged 81 years, Housewife, Indian National, Residing at H. No.167, Valpoi, Sattari, Goa.
4. Shri Shaikh Naruddin @ Xec Noroddin, Son of Shaikh Daud @ Xec Daud, 73 years of age, retired, Indian National, Residing at H. No.1, Thane Road, Valpoi, Sattari, Goa.
5. Smt. Bhadrunissa Bi, Wife of Shri Shaikh Naruddin, 67 years of age, housewife, Indian National, Residing at H. No.1, Thane Road, Valpoi, Sattari, Goa.
6. Shri Shaikh Hanis @ Xec Anis, son of Shaikh Sharif Shaikh Daud, 85 years of age, Service, Indian National, Residing at H. No.10, Mauxi Road, Valpoi, Sattari, Goa.
7. Smt. Rizwana Bi Shaikh, Wife of Shaikh Anis @ Xec Anis, 42 years of age, Service, Indian National, Residing at H. No.10, Mauxi Road, Valpoi, Sattari, Goa.
8. M/s. Indian Oil Corporation Ltd., Flat No. F-1, Building

No.8, Kamat Estate,
Caranzalem, Tonca,
Panaji 403002, through Rajan
Ranjan, Dy. Manager.

9. M/s. Indian Oil Corporation
Ltd., Pune Divisional Office,
885/1, Bhandarkar Institute
Road, Pune- 411004.

10. The Chief Officer, Valpoi
Municipal Council, Valpoi,
Sattari, Goa.

11. Shri Sadashiv Dadoba
Mandalik, Wife of Shri
Dadoba Mandalik,
aged not known, housewife,
Indian National, Residing at
Nagala Park, Kolhapur
through her husband, Shri
Sadashiv Dadoba Mandalik.
(Deleted as per order dated
5.3.2012). Respondents.

Mr. I. Agha, Advocate for the petitioners.

Mr. J. Mulgaonkar, Advocate for the respondent nos. 1 and 3.

Mr. Nigel Costa Frias, Advocate for the respondent nos. 8 and 9.

Mr. Anthony D'Silva, Advocate for the respondent nos.4,5, 6 & 7.

WITH

WRIT PETITION NO. 144 OF 2014.

1 Shri Shaikh Naruddin @ Xec
Noroddin, Son of Shaikh
Daud @ Xec Daud. 73 years of
age, retired, Indian National,
Residing at H. No.1, Thane
Road, Valpoi, Sattari-Goa.

2 Smt. Bhadrnissa Bi, Wife
of Shri Shaikh Naruddin @
Xec Noroddin, 67 years of
age, housewife, Indian
National, Residing at H.
No.1, Thane Road, Valpoi,
Sattari Goa.

- 3 Shri Shaikh Hanis @ Xec Anis,
son of Shaikh Sharif Shaikh
Daud, 85 years of age,
service, Indian National,
Residing at H. No.10, Mauxi
Road, Valpoi, Sattari-Goa.
- 4 Smt. Rizwana Bi Shaikh,
Wife of Shri Shaikh Hanis @
Xec Anis, 42 years of age,
housewife, Indian National,
Residing at H. No.10, Mauxi
Road, Valpoi, Sattari-Goa. Petitioners.

Versus

- 1 Shri Shaikh Abdul Razak,
son of Shaikh Karim, retired,
71 years of age, Indian
National, Residing at H.
No. 61, Nanus, Valpoi,
Sattari-Goa.
- 2 Shri Shaikh Abdul Majid @
Xec Abdul Mogid, son of
Shaikh Ismail, retired, 60
years of age, Indian National,
Residing at H. No.167, Nanus,
Valpoi, Sattari-Goa.
- 3 Smt. Fakrunissabi @
Coirunnissabi, Widow of
Shaikh Sharif, aged 81 years,
Housewife, Indian National,
Residing at H. No.167, Valpoi,
Sattari-Goa.
- 4 Shri Shankarrao Dattatray
Patil, 75 years of age,
married, agriculturist,
Indian National, Residing at
H. No.74, Nanus, Valpoi,
Sattari-Goa.
- 5 Smt. Snehalata Shankarrao

Patil, Wife of Shankarrao D.
Patil, 72 years of age,
Housewife, Residing at
Nanus, Valpoi, Sattari, Goa
through her duly constituted
Attorney Shri Shankarrao
Dattatray Patil, unmarried,
Residing at H. No.74, Nanus,
Major of age, Valpoi, Sattari,
Goa.

- 6 Shri Vijaykumar Shankarrao
Patil, son of Shri Shankarrao
Dattatray Patil, 49 years of
age, unmarried, business,
Indian National, residing at H.
No. 74, Nanus, Valpoi, Sattari,
Goa.
7. Shri Sadashiv Dadoba
Mandalik, son of Shri Dadoba
Mandalik, aged 79 years,
married, agriculturist,
Indian National, residing at
Nagala Park, Kolhapur
through her duly constituted
Attorney Shri Shankarrao D.
Patil, Residing at H. No. 74,
Nanus, Sattari-Goa.
8. M/s. Indian Oil Corporation
Ltd., Flat No. F-1, Building
No.8, Kamat Estate,
Caranzalem, Tonca, Panaji
403002, through Rajan
Ranjan, Dy. Manager.
9. M/s. Indian Oil Corporation
Ltd., Pune Divisional Office,
885/1, Bhandarkar Institute
Road, Pune- 411004.
10. The Chief Officer, Valpoi
Municipal Council, Valpoi,
Sattari, Goa.

11. Shri Sadashiv Dadoba Mandalik, wife of Shri Dadoba Mandalik, aged not known, housewife, Indian National, residing at Nagala Park, Kolhapur through her husband Shri Sadashiv Dadoba Mandalik (Deleted as per order dated 5.3.2012.) Respondents.

Mr. Anthony D'Silva, Advocate for the petitioners.
Mr. J. P. Mulgaonkar, Advocate for the respondent nos.1 and 3.
Mr. Nigel Costa Frias, Advocate for the respondent nos. 8 and 9.
Mr. I. Agha, Advocate for the respondent nos. 4, 5, 6 and 7.

CORAM : F.M. REIS, J.

DATE : 10th July, 2015.

ORAL JUDGMENT

Heard Mr. I. Agha, learned Counsel appearing for the petitioner in Writ Petition no. 143/2014, Mr. Anthony D'Silva, learned Advocate appearing for the petitioner in Writ Petition No.144/2015 and Mr. M. P. Mulgaonkar, learned Advocate appearing for the respondents/original plaintiffs.

2. Rule. Heard forthwith with the consent of the learned Counsel appearing for the parties. The learned Counsel appearing for the respondents/original plaintiffs waives notice.

3. Both the above Writ Petitions challenge an order dated 17.1.2014 passed by the learned Civil Judge, Senior Division, Bicholim in Special Civil Suit No. 16/2011/A whereby an

application for amendment filed by the respondents came to be allowed.

4. The main crux of the submission of the learned counsel appearing for the petitioners is that by the proposed amendment, a hopelessly time barred claims are sought to be introduced by the respondents by challenging the transactions which took place in the year 1963, 1968 and 2006.

5. It is further the contention of the learned counsel appearing for the petitioner that the application itself is malafide as the in the amendment application are dishonest pleas by the respondents to make a false ground to challenge the transactions where even their predecessor in title were parties to the such documents. It is further contention of the learned counsel appearing for the petitioner that while disposing the application for temporary injunction, the Court came to the conclusion that the respondent had suppressed the documents which are sought to be challenged in the proposed amendment, which according to them, itself suggest that the respondents are not entitle for any discretion to allow them to amend the plaint. The learned counsel has thereafter taken me through the impugned order to point out that the learned Judge has erroneously failed to examine this aspect while granting leave to the respondents to amend the plaint. The learned

counsel has relied upon the judgment of the Apex Court reported in **2009(10) SCC 84** in the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others.***

6. On the other hand Mr. Mulgaonkar, learned counsel appearing for the respondents has supported the impugned order. The learned counsel points out the fact that the amendment is referable to the dispute and the issues raised in the suit. The learned counsel further submits that the documents which are sought to be challenged by the proposed amendment have nexus to the dispute raised in the suit. It is further contention of Mr. Mulgaonkar that the reliance in the finding by the learned counsel appearing for the petitioner are basically in the context of examining an equitable relief of temporary injunction and not in the context of an application for amendment of plaint under Order 6 Rule 17 of C.P.C. The learned counsel for the respondents further submits that the contentions sought to be advanced are basically in the nature of the defence to the proposed amendment which cannot be examined by this Court while granting leave to amend the plaint. The learned counsel further submits that by the impugned order the learned Judge has granted leave to amend the plaint and, as such, no jurisdictional error has been committed by the learned Judge which would call for

interference by this Court in the present Writ Petition.

7. I have given my thoughtful consideration to the rival contentions of the respective parties and I have also gone through the records.

8. No doubt, the learned counsel appearing for the petitioners may be justified to contend that the averments proposed to be introduced were prima facie known to the respondents before the filing of the suit. But, however, the contention of the petitioners that the relief sought by the respondents is barred by limitation will have to be examined in the context that the respondents claimed that they had knowledge of the said documents only after the petitioners filed their written statement. In any event the suit was filed in the year 2011 and the application for amendment came to be filed in the year 2012. In such circumstances, whether the reliefs are barred by limitation or the respondents are not entitled to the alleged relief sought by way of amendments are matters to be examined by the learned Judge on its own merits after recording of evidence. Considering that the issue of limitation is arguable on the face of the allegations in the proposed amendment, the question of non-suiting the respondents at this stage on this count would not at all be justified. The amendments sought to be incorporated are referable to the suit property and can be

said to be in the context of the dispute raised in the suit.

9. No doubt, the petitioners would be entitled to file their Written statement disputing all the contentions raised in the proposed amendment and take all defences available to the petitioners in law including the plea of limitation. It is not disputed that the application for leave to amend was filed before the evidence had commenced in the suit and, as such, the learned Judge has exercised its discretion to allow the application for amendment considering the nature of dispute in the suit. The impugned Order challenges leave granted by the learned Judge to amend the pleadings. I find that there is no jurisdictional error committed by the learned Judge whilst passing the impugned Order which would call for interference by this Court under Article 227 of the Constitution of India but, however, taking note of the pleadings sought to be incorporated, I find that the Petitioner in both the Petitions are entitled for costs which are quantified at Rs.10,000/- each to be paid to the Petitioners in both the above Writ Petition as condition precedent. Such costs shall be paid by the Respondent nos. 1 to 3/Original Plaintiffs. Subject to the above payment of costs of Rs.10,000/- each to the Petitioner in each of the Writ Petition, there is no case made out for interference in the impugned Order.

10. In view of the above, I pass the following:-

ORDER

- i The impugned order dated 17.1.2014 passed by the learned Civil Judge, Senior Division, Bicholim in Special Civil Suit No. 16/2011/A to the extent that application for amendment filed by the respondent nos.1 to 3 is allowed subject to payment of costs of Rs.10,000/- to each set of the petitioner in such aforesaid petition as condition precedent.
- ii. The petitioners are also entitled to file additional written statement to the amended plaint. So also other defendants in the suit are also permitted to file additional written statement on the date as fixed by the learned Trial Judge. Amendment to be carried out on or before the date before the learned Judge.
- iii. Parties are directed to appear before the learned Judge on 1.9.2015 at 10.00a.m.
- iv. Rule stands disposed of accordingly.

F.M. REIS, J.

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