

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 194 OF 2015

MR. SAVIO BENJAMIN MASCARENHAS AND
3 ORS.,

... Petitioners

Versus

MRS. LILA BAGWANT KAMAT @ LILAVOTI
POI DUNCOTTO OR LILA NARANA PAY
DUNCOTTO AND 21 ORS.,

... Respondents

Mr. Jagannath Jayant Mulgaonkar, Advocate for the petitioners.

Coram:- M. S. SANKLECHA, J.

Date:- 7th April, 2015

ORAL ORDER :

This petition under Articles 226 and 227 of the Constitution of India, challenges the order dated 16 February, 2015, passed by the Trial Court. The impugned order rejected the petitioners (original defendants No.1 & 2) application for striking out certain portion of the plaint and also seeking to delete the names of respondent Nos.4 to 23 (original defendant Nos.3 to 22).

2. The grievance of the petitioner is that the impugned order is a non-speaking order in as much as it did not consider the appellants averments with regard to striking out of pleadings, and only restricted itself to the relief sought in respect of striking out of the parties. Thus, it is contended that the order falls foul of Order VI Rule 16 of the Civil Procedure Code. It is also contended that the pleadings contain scandalous averments which are unnecessary for the present

proceedings. In the above circumstances, the Trial Court ought to have allowed the petitioners application for striking out pleadings and parties from the plaint.

3. The power to strike out pleadings is an extra-ordinary power, which has to be exercised with due care, caution and circumspection. The impugned order records the fact that the plaint was filed in the year 2008 when the suit commenced. By the time the application for striking out pleadings and parties was filed, Issues had already been framed and evidence had commenced. The pleadings which are sought to be struck out, according to the petitioners relate to respondent Nos.3 to 23, whose names are sought to be struck off. The impugned order does also record the fact that the respondent Nos.3 to 23 are not making any grievance of being added as parties. Therefore, the impugned order holds that, the application filed by the petitioners for striking out portion of pleadings in the plaint and some parties viz. respondent Nos.3 to 23 need not be allowed.

4. Thus, there is no justification to interfere with the impugned order. Moreover, in the present facts, it would be noticed as rightly observed by the impugned order, that the suit has been filed in the year 2008 and the proceedings to strike out the pleadings and the parties, is made in the middle of the trial i.e. after evidence is commenced. In these circumstances, this contention of the petitioners itself dis-entitle them to any relief in the present proceeding.

5. Accordingly, petition is dismissed. No order as to costs.

M. S. SANKLECHA, J.

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