

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 447 OF 2012

1. Mr. Manuel Dionisio Da'Costa,
Major in age, married,
landlord, Resident of Guirdolim,
Chandor, Salcete, Goa,
presently residing in England and his wife.
(deceased represented by his L.R's.)
 - a. Etelvina D'costa,
major in age,
daughter of the deceased appellant no.1,
married and her husband.
 - b. Mr. Leo Fernandes,
major in age,
son-in-law of the deceased.
 - c. Mrs. Maria Esperance D'Costa,
major in age,
daughter of the deceased appellant no.1.
 - d. Mr. Lourenco D'costa,
major in age,
son of the deceased appellant no.1,
married and his wife.
 - e. Mrs. Flavia D'Costa, major in age,
daughter-in-law of the deceased.
 - f. Mrs. Margaret D'costa
major in age, daughter of the deceased appellant no.1,
married and her husband
 - g. Mr. Leo Fernandes, major in age,
son-in-law of the deceased.
 - h. Mr. Johano D'Costa, major in age,
son of deceased appellant no.1.

- i. Mrs. Philomena D'costa,
major in age,
daughter of the deceased appellant no.1 married,
and her husband
 - j. Mr. John D'Costa, major in age,
son-in-law of the deceased.
 - k. Mrs. Matilda D'Costa, major in age,
daughter of the deceased appellant no.1
married and her husband.
 - l. Mr. Agusgto D'costa, major in age,
son-in-law of deceased appellant no.1.
All resident of - c/o Mrs. Etelvina D'Costa,
31, Hobeletts Road, Adeyfield, Hence,
Hempstead Hertford Shine,
HP 2 5 LS England.
2. Mrs. Maria Quiteria Godhino
alias Maria Quiteria Godhino D'Costa,
major in age, Daughter of late Sebastiao
Rosario Godhino, presently residing in England,
Both are represented in this petition by their
Power-of-attorney, Mr. Wilson D'Costa,
age 39 years, bachelor, landlord,
Resident of H. No.125, Rohini, Bhat,
Guirdolim, Chandor, Salcete, Goa.
- Petitioners.
Original Plaintiffs

V e r s u s

- 1. Smt. Maria Augusta Da'Costa,
Major in age, widow,
wife of Nicolau Vincent Fernandes,
Resident of H. No. 328, Tancamola,
Guirdolim, Chandor, Salcete,
Goa and her children.
- 2. Mr. Simeao Berto Fernandes,
major in age, married and his wife
(deceased) represented by his LR's

- a Melvina Fernandes,
 major in age,
 daughter of the deceased respondent no.2

- b Valancio Fernandes, major in age,
 son of the deceased respondent no.2
 both are r/o. H. No. 328,
 Tancamola, Guirdolim, Salcete, Goa.

- 3. Mrs. Socorina Fernandes,
 Major in age, Both r/o. H. No. 328,
 Tancamola, Guirdolim, Salcete, Goa.

- 4. Mrs. Monic Fatima Fernandes,(Expired)
 Major in age, married and
 her husband represented by L.R.

- a. Master Clearance Fernandes,
 minor, represented by his guardian respondent no. 5,
 Mr. Renato Fernandes.

- 5. Mr. Renato Fernandes,
 Major in age, Both r/o H. No. 22,
 Dandeawado, Chinchinim, Salcete, Goa.

- 6. Mrs. Albertina Fernandes, Major in age,
 married and her Husband.

- 7. Mr. Agnelo Francisco Pereira,
 Major in age, both r/o. H. No. 328,
 Tancamola, Guirdolim, Salcete, Goa.

- 8. Mrs. Isabel Fernandes,
 Major in age, married and her husband

- 9. Mr. Floriano Barreto, Major in age,
 Both r/o. H. No. 12, Odolfondo, Canacona, Goa.
- 10. Mr. Anthony Fernandes,

Major in age, married and his Wife,

11. Mrs. Piedade Fernandes,
Major in age, Both r/o. H. No. 328,
Tancamola, Guirdolim, Salcete, Goa.
12. Mrs. Dorothy Fernandes, Major in age,
married and Her husband
13. Mr. Constantino Fernandes,
Major in age, Both r/o. H. No. 55,
Shirvoda, Taluka Ponda, Salcete, Goa.
14. Mrs. Clara Fernandes,
Major in age, married and Her husband
15. Mr. Saluzinho Fernandes,
Major in age, Both resident of H. no. 101,
Baina, Vasco-da-Gama, Goa. (deceased)
16. Miss Lucy Fernandes, Major in age,
Spinster, R/o, H. No. 328, Tancamola,
Guirdolim, Salcete, Goa.

..... Respondents
Original Defendants

Mr. Joseph Rodricks, Advocate for the Petitioners.
None for the Respondents.

Coram :- F. M. REIS, J

Date : 13th August, 2015.

ORAL JUDGMENT

Heard Shri J. Rodricks, learned Counsel appearing for the
Petitioners. None for the Respondents, though served.

2. Rule. Heard forthwith. The Respondents were notified with a notice

indicating that the above Petition may be disposed of finally at the stage of admission. On the last date of hearing when the Respondents failed to appear an opportunity was given to the Respondent to remain present on the next date. As none appeared for the Respondents, the Petition was taken for disposal on merits.

3. The above Writ Petition takes an exception to an Order dated 17.03.2012, whereby an application for amendment under Order 6 Rule 17 of the Civil Procedure Code filed by the Petitioners who are the Plaintiffs in the suit, came to be dismissed.

4. It is the contention of Shri Rodricks, learned Counsel appearing for the Petitioners, that though the application came to be filed before the hearing had begun, the learned Judge on erroneous considerations has refused leave to the Petitioners to amend the plaint. Learned Counsel further pointed out that the amendment sought by the Petitioners is essentially to clarify the identity of the disputed property as mentioned at Para 2 of the plaint. The learned Counsel further pointed out that the Petitioners have not changed the suit property but have only identified such property by means of a survey number and the area. Learned Counsel has thereafter taken me through the impugned Order and pointed out that the learned Judge has acted with material irregularity affecting its jurisdiction by refusing leave to the Petitioners to amend the plaint.

5. The Respondents though served, failed to remain present.

6. I have considered the submissions of the learned Counsel and I have

also gone through the records. It is not disputed that the records reveal that the application for amendment came to be filed before the evidence of the Plaintiffs/Petitioners had commenced. In such circumstances, the question of showing any due diligence in terms of the provisions of Order 6 Rule 7 of the Civil Procedure Code, would not at all arise. Apart from that, the proposed amendment is referable to the dispute in the suit filed by the Petitioners. As such, the learned Judge was not justified to refuse leave to the Petitioners to amend the plaint. As far as the finding of the learned Judge based on limitation, I find that taking note of the relief sought by the Petitioners in the suit, such plea of limitation is arguable which the learned Judge would have to examine on its own merits after framing an issue with that regard. Considering that the application for amendment was filed before the evidence commenced, I find that the learned Judge was not justified to pass the impugned Order and refuse leave to the Petitioners to amend the plaint. The amendment sought is not inconsistent with the original pleadings nor does it change the cause of action. The suit property remains the same only being identified. Hence, the impugned Order dated 17.03.2012 cannot be sustained and deserves to be quashed and set aside.

7. No doubt, such leave can be granted to the Petitioners subject to the payment of costs to the Respondents which are quantified at Rs.2,000/- as condition precedent.

8. In view of the above, I pass the following :

ORDER

(i) The impugned Order dated 17.03.2012 is quashed and set aside.

(ii) Leave to amend the plaint as prayed for by the Petitioner is granted subject to the payment of costs to the Respondents which are quantified at Rs.2,000/- as condition precedent.

(iii) Needless to say, the Respondents are entitled to file an additional written statement to the amended plaint. All the contentions of the Respondents are left open.

(iv) Rule is made absolute in the above terms.

F .M. REIS, J.

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