

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.466 OF 2014**

SHRI LLOYD RODRIGUES REP. BY THEIR
ATTORNEY MRS. DAESIE NATIVIDADE
MARTINHA RODRIGUES E F. AND ANR. ... Petitioners

Versus

SMT. LELES PEREIRA NEE LELES
OZORIO REP BY HER ATTORNEY
SMT. AURA FERNANDES ... Respondent

Mr. Caetano Mascarenhas, Advocate for the Petitioners.

Mr. C.A. Coutinho, Advocate for the Respondent.

Coram:- N. M. JAMDAR, J.

Date:- 25 February 2015

ORAL ORDER :

By this petition, the petitioners challenge the order passed by the learned Civil Judge, Junior Division, Quepem dated 23 May 2014, allowing the application filed by the respondent-plaintiff for amendment of the plaint.

2. The respondent has filed the present suit for declaration of ownership and for correction of records to enter the name of of the respondent in the records. It is the case of the respondent that the property known as Nocodbaba alias Nocodbabo or Gallint situated at village Avedem, half of which was belonging to one Monsabri Paulo Filipe Antonio Dias

which was subsequently owned and possessed by the respondent. It is the case of the respondent that petitioner published a notice in the newspaper which was replied to by the respondent. The respondent thereafter applied for mutation of the records, which was rejected. On this basis suit came to be filed. The petitioners appeared in the suit and filed their written statement.

3. Thereafter the respondents filed an application for amendment of plaint. The respondent stated that when the suit was filed respondent was not having the survey plan with her and mistake cropped up while describing the western boundary which was sought to be corrected by introducing the amendment to describe the western boundary. By the impugned order dated 23 May 2013, the said amendment has been granted.

4. Mr. C. Mascarenhas, the learned Counsel for the petitioner has challenged the impugned order on the ground that no sufficient cause has been made out as to why the amendment was moved at such a belated stage and serious prejudice will be caused to the petitioner if the entire trial starts afresh, which is at the stage of final hearing. The learned Counsel relied upon the decision of the Apex Court in the case of **Vidyabai & Ors. V/s. Padmalatha & Anr.** reported in **AIR 2009 SC 1433** to contend that this error committed by the learned Civil Judge is a jurisdictional error.

5. If there are sufficient and cogent reasons, it is open for the

Court to grant amendment even at the belated stage. The respondent in the application has given reason as to why the amendment could not be carried out earlier. The reason given is that the respondent did not have the survey plan and therefore western boundary remained to be properly described. This reason has been found to be sufficient by the learned Civil Judge. It is not possible to sit in appeal over the sufficiency of this reason or as to whether the reason was falsehood as contended by Mr. Mascarenhas. If the reason that the survey plan was not available and, therefore, mistake occurred is accepted, then there was no error on the part of the learned Judge in granting the amendment. It is not possible to reappreciate this factual position as to whether reason given is correct or otherwise. It is not the case of complete absence of reason. Therefore the order cannot be said to suffer from any jurisdictional error.

6. As regard the prejudice to the petitioner if retrial is held Mr. Coutinho, the learned Counsel for the respondent submits that the suit will proceed without respondent insisting for retrial on the basis of the amended portion, or any further evidence. This statement is accepted. In view of this statement, the apprehension expressed by Mr. Mascarenhas does not survive.

7. In the circumstances, no case is made out to interfere with the discretionary order of the learned Civil Judge in the writ jurisdiction. The Writ Petition is accordingly rejected. The interim order granted in this petition stands vacated. The

parties will appear before the learned Civil Judge on 3 March 2015, if date prior to that is not already fixed by the learned Judge.

N. M. JAMDAR, J.

NH/-