

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 543 OF 2015

SHRI INACIO MARIANO DIAS
(DECEASED) AND 4 ORS.,

... Petitioners

Versus

SMT. PALMIRA VALADARES (DECEASED)
THROUGH HER LEGAL HEIRS AND 7
ORS.,

... Respondents

Mrs. A. Agni, Senior Advocate with Ms. Kalpa Govenkar, Advocate
for the Petitioners.

Coram:- F. M. REIS, J.

Date:- 17th July, 2015

ORAL ORDER

Heard Mrs. Agni, learned Senior Advocate appearing for the
Petitioners.

2. The above Petition challenges an Order passed by the learned
Civil Judge, Junior Division, at Panaji, dated 04.07.2015 whereby an
application for amendment filed by the Petitioners came to be
rejected.

3. Upon hearing the learned Senior Counsel appearing for the
Petitioners, I find that the suit was filed by the Petitioners in the year
1992 wherein an Order of temporary injunction is operating in favour
of the Petitioners. As pointed out by Mrs. Agni, Learned Senior
Counsel appearing for the Petitioners, since the year 1995 upto the

year 2014, the suit was kept in abeyance by consent of both the Advocates on the premise that some proceedings were pending before the learned Mamlatdar with regards to the claim of tenancy. But, however, it has now transpired that though such proceedings were pending, no action was taken thereon. The suit filed by the Petitioners was for permanent injunction. It may not be emphasised that in such suit the aspect to be examined is as to who is in possession of the property which is refundable to any legal right to remain in possession. The question of amending the plaint in the year 2014 itself disentitles the Petitioner from filing an application for amendment in the suit of 1992, on account of delay and laches and the conduct of the Petitioner is not pursuing the proceedings before the learned Mamlatdar.

4. No doubt, the Court has to take a liberal view in allowing amendments to the pleadings but this cannot be stretched to the extent of seeking an amendment after nearly 22 years. There would be no failure of justice to the Petitioners in case this Court does not interfere in the impugned Order. Taking note of the relief sought in the suit, I find no jurisdictional error has been committed by the learned Judge by refusing to exercise jurisdiction in favour of the Petitioners to grant the application for amendment.

5. Mrs. Agni, learned Senior Advocate, has relied upon the Judgment of the Apex Court reported in (2007) 1 SCC 765 in the

case of the State Bank of Hyderabad vs. Town Municipal Council. On perusal of the facts therein, I find that the ratio laid down does not apply to the facts of the present case. The application for amendment is grossly delayed, hence the Petition stands rejected.

F. M. REIS, J.

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