

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 583 OF 2014

Shrikant Shambhu Volvoikar,
Married, aged 57 years,
Residing t Maula,
Santa Ana, Tiswadi-Goa. Petitioner
V e r s u s

1. Narendra Pandu Chatim,
Son of Pandu Chatim,
Married, major of age,
businessman, r/o House no.196,
Badem, Salvador do Mundo,
Bardez-Goa. And anr. Respondents

Mr. R. G. Ramani, Advocate for the Petitioner.
Mr. Nigel da Costa Frias for Respondents no.1 and 2.

CORAM: N. M. JAMDAR, J.

DATE: 20 FEBRUARY, 2015.

ORAL ORDER:

By this petition, the petitioner challenges the order passed by the learned Civil Judge, Junior Division, Panaji dated 5 July 2014, granting the application filed by the respondents-defendants to amend the plaint and production of

certain additional documents.

2. The respondents-plaintiffs had filed a suit claiming ownership on the basis of adverse possession and prescription. Thereafter, the respondents filed an application to bring on record a promissory note dated 5 June 1957 signed by one Lourdes Pinto and Deed Gift of Acquittance dated 9 February 1959. It was the case of the respondents that the production of these documents and amendment was extremely necessary as these documents would show that Lourdes Pinto, who was the earlier owner of the property had gifted the same to the father of the plaintiff no.1. It was stated in the application that the respondents had recently come to know about the document. The application was opposed by the petitioner. The learned civil judge by the impugned order came to the conclusion that the case of the respondents that they have recently come to know about the documents was a plausible case and there were no inconsistency in the stand as relief of declaration of ownership remained.

3. The learned Civil Judge has used his discretion to permit the amendment, as the learned civil judge was satisfied that the explanation given by the respondents the fact that the respondent had initially filed a suit based on adverse possession and thereafter amendment is moved for claiming ownership on the basis of the Gift Deed. The explanation that they came to know about the Deed late appears to be plausible as if this case is true, then that would be a primary point in favour of the respondents.

4. Mr. R. G. Ramani, learned counsel for the petitioner submitted that the respondents will be precluded from claiming ownership on the basis of the Gift Deed by virtue of the bar of limitation, however, this point is to the merits of the claim, which would be considered at the time of hearing by the learned judge.

5. Even the objection raised regarding inconsistent pleadings has rightly has been discarded by the learned judge. The suit is for claiming declaration of ownership, by amendment only an additional head has been introduced. It is true that the amendment is moved at a late stage, but if the amendment is of importance to the plaintiff and plausible explanation is given for the delay, the Court is not precluded from exercising its discretion to allow the amendment. In limited jurisdiction under Article 227 of the Constitution, it is not possible to interfere with the discretion exercised by the learned Civil Judge. All contentions regarding the amended portion and documents, are kept open. The writ petition is accordingly rejected.

N. M. JAMDAR, J.

Ap/-