

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 719 OF 2015**

MRS. MARIA FATIMA MACHADO, THROU  
P.O.A MR. JAMES DO MENINO JESUS  
MACHADO,

... Petitioner

Versus

MRS. MARIA ZITA ANDRADE AND 2  
ORS.,

... Respondents

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Shri Sagar Dhargalkar, Advocate for the Petitioner.

**CORAM:- C. V. BHADANG, J.**

**DATE:- 16<sup>th</sup> SEPTEMBER, 2015.**

**ORAL ORDER:**

By this petition, the petitioner who is the original plaintiff is challenging the order dated 09.07.2015 passed by the learned Senior Civil Judge, Mapusa in Regular Civil Suit No. 180/2013/A. By the impugned order, the application (Exhibit D-25), filed by the petitioner for amendment of the plaint has been rejected.

2. The brief facts are that, the petitioner had filed Regular Civil Suit No. 180/2013/A under Section 6 of the Specific Relief Act. In that case, the petitioner had also filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (C.P.C., for short), which application came to be rejected by order dated 11.10.2013. The respondents (original defendant nos. 1, 2 and 3) contended that the suit house had collapsed more than three years back and after its reconstruction, the house has been granted on license basis to one Mr. Promod Gajanan Shinde, who is in physical possession of the suit house from 01.08.2013. That, the said license was granted for a period of three years. Be that as it may, when the suit was at the stage of recording evidence, the application (Exhibit D-25) came to be filed on behalf of the petitioner under Order 6, Rule 17 of C.P.C., for amendment of the plaint for incorporating paras 9A to 9H and also seeking amendment to the prayer clause by incorporation of the prayer clauses aa to bb.

In short, the petitioner sought to introduce an alternate claim for compensation as under:

*"(a) Towards loss of furniture, fixtures, cupboards, beds, mattress, sofa set, table, chairs and other household articles at Rs.5,00,000/-.*

*(b) Towards mental sufferings and pain, Rs.5,00,000/-.*

*(c) Towards inconvenience and future alternate accommodation Rs.50,00,000/-."*

3. It was contended that this was on account of subsequent development after the application for temporary injunction was rejected. In para 4 of the application, the petitioner contended as under:

*"After the stay was vacated, the defendant went ahead with the full fledged construction thus formally converting the structure already built by demolishing the suit house as shops. At present these shops built in place of suit house has been given on rent by the defendants for commercial purpose. In short the only place of shelter of the plaintiff has been illegally and cunningly and without any authority of law converted into shops for commercial purpose by the defendants after the institution of the present suit. Thus it is clear that the aforesaid Act of*

*the defendants is a subsequent act which has taken place during the subsistence of the present suit. Therefore in the situation the plaintiff is constrained to file the present application for incorporating all the subsequent development/changes and to claim for a relief which flows from the aforesaid subsequent acts of the defendants.”*

4. The application was opposed on behalf of the respondents-defendants. The learned trial Court by the impugned order came to the conclusion that although, the application was filed before the commencement of the trial, it was found in paragraph 13 of the impugned order that the suit, which was essentially under Section 6 of the Specific Relief Act was in the nature of a summary suit and the relief which can be claimed would be of recovery of possession only and no other relief. Therefore, granting the proposed amendment to incorporate subsequent developments and to seek relief of compensation was impermissible and allowing the amendment would change the nature of the suit. In the face of such finding, the application came to be rejected.

5. I have heard Shri Dhargalkar, the learned Counsel appearing for the petitioner. With the assistance of the learned Counsel for the petitioner, I have perused the impugned order.

6. It is submitted by the learned Counsel for the petitioner that the suit house was demolished in the absence of the petitioner and taking undue advantage of rejection of the application for temporary injunction, the respondents constructed a commercial complex comprising of shops, which are let out to third parties. It is submitted that in view of the subsequent development, it was necessary to seek alternate relief of compensation, in the event, the petitioner fails to obtain possession. It is submitted that there is no bar under Section 6 of the Specific Relief Act to claim a relief, which may be alternate to the relief of possession. Reliance is placed on the decision of this Court, in the case of **Mudra Salt and Chemical Industries Vs. Collector, District Thane and others**, reported in **2001 (3) MHLJ 151** and the decision of the Hon'ble Apex Court in the case of, **G. Nagamma and another Vs. Siromanamma and another**, reported in **(1996) 2 SCC 25**, in order to submit that the amendment

ought to have been allowed.

7. I have considered the circumstances and the submissions made. At the outset it needs to be stated that there cannot be any manner of dispute about the preposition that the Court can grant amendment at any stage of the proceedings, subject to the rider as contained under the proviso to Order 6, Rule 17 of C.P.C.

8. In the present case, the application is filed before the evidence of the plaintiffs has started. Thus, the embargo placed by proviso to Order 6, Rule 17 of C.P.C. would not come in the way. The only question is whether the amendment as proposed and the relief of compensation can be allowed to be incorporated in a suit under Section 6 of the Specific Relief Act. It is inherently a limited action of recovery of possession based on previous possession. A perusal of the record would show that the learned trial Court has rejected the application only on the ground that the proposed amendment would change the nature of the suit and the relief of compensation cannot be granted under Section 6 of the Specific Relief Act. Normally,

the Courts would be liberal in granting amendments, which are sought before the commencement of the trial. This would again be subject to a rider that such amendments are necessary in deciding the controversy in the suit and does not change the nature of the suit. Coming to the present case, a perusal of the proposed amendment would show that extensive amendments is sought to be carried out in the plaint and the prayer clause, which in my considered view cannot not be granted in a suit filed under Section 6 of the Specific Relief Act.

9. In the case of **G. Nagamma and another** (supra), the suit was for specific performance of reconveyance, in which by way of amendment a prayer to redeem the mortgage was introduced. It was held that the amendment could be allowed as the amendment would neither change the cause of action nor materially affect the relief claimed.

In the case of **Mudra Salt and Chemical Industries** (supra), the suit was for a negative declaration that defendant nos. 1 to 3 had no right, title and interest to allot, any part or portion of the suit land. After the defendants had filed the written statement thereby denying the title, the

application for amendment of the plaint was moved. The perusal of para 3 of the judgment would show that the plaintiffs claimed ownership on the disputed land by way of adverse possession and this was sought to be pleaded by way of amendment.

10. It thus, appears that none of the cases arose out of Section 6 of the Specific Relief Act. The aforesaid cases would be clearly distinguishable on facts. I find that no exception can be taken to the impugned order refusing to grant the amendment, so as to warrant interference under Article 227 of the Constitution of India.

In the result, the writ petition is dismissed.

**C. V. BHADANG, J.**

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