

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 197/2013**

1) Laxman Sanvlo Shetkar, (since deceased)

- 1a) Pralhad Laxman Shetkar;
- 1b) Smt. Vandana Pralhad Shetkar;
- 1c) Shivaji Laxman Shetkar;
- 1d) Smt. Surat Shivaji Shetkar;
- 1e) Pradeep Laxman Shetkar;
- 1g) Suresh Laxman Shetkar;
- 1h) Sharana Krishnanath Naik;

All residing near Damodar Temple,
Zambaulim, Sanguem, Goa.

- 1i) Pritidas Zambaulikar;
 - 1j) Smt. Sharmila Pritidas Zambaulikar;
- Both residents of House No.252,
Namshi, Bandora, Ponda, Goa.

2) Smt. Nalawati Laximan Shetkar,
housewife; major,

3) Shri Bhuto Sanvlo Shetkar
(since deceased) LRs. already present
at 4a to 4 s.

4) Smt. Satyabhama Bhuto Shetkar
(since deceased)

- 4a) Amrut Bhuto Shetkar,
- 4b) Shobhan Amrut Shetkar,
- 4c) Chandresh Bhuto Shetkar,
- 4d) Shaila Chandresh Shetkar,
- 4e) Eknath Bhuto Shetkar,
- 4f) Nutan Eknath Shetkar;
- 4g) Smita Balchandra Joshi,
- 4h) Balchandra Vithal Joshi,
- 4i) Asha Gajanan Naik,
- 4j) Gajanan Babu Naik,
- 4k) Rajeshree Rajendra Pednekar,
- 4l) Kranti Sandesh Vernekar,
- 4m) Sandesh Hanumant Vernekar,

- 4n) Nirupa Navnath Naik,
- 4o) Navnath Tukaram Naik,
- 4p) Chandani Santosh Naik,
- 4q) Ranjeeta Rajendra Naik,
- 4r) Neeta Shivdas Naik,
- 4s) Shivdas Shivram Naik,

All residents of Cotta, Amona,
Quepem, Goa represented by their
Attorney Shri Amrut Bhuto Shetkar,
resident of House No.14,
Cotto, Amona, Quepem, Goa.

5) Shri Digambar Zaya Shetkar (expired)

6) Shri Manohar Zaya Shetkar, (Attorney)
major of age, and his wife;

7) Smt. Malika Manohar Shetkar,
housewife;

8) Miss Madhubala Zaya Shetkar,
major of age,

9) Miss. Vismita Zaya Shetkar

10) Smt. Anita Dinesh Naik, and
her husband;

11) Shri Dinesh Umanath Naik, major,
All residents of Taripanto,
Sanguem, Goa.

12) Smt. Vilasini Gurudas Arondekar,
(since deceased) represented by :

12a) Teja Gurudas Arondekar,
12b) Dirya Gurudas Arondekar,
Both residents of H.No.26,
Batulem, Panaji, Goa.

13) Shri Gurudas Bablo Arondekar,
Both residents of House No. 36,

Batulem, Panaji, Goa, the Petitioner
Nos. 5 and 7 to 13 are represented
by their Attorney Petitioner No.6
Shri Manohar Zaya Shetkar, major,
resident of House No.20,
Taripanto, Sanguem, Goa.

14) Shri Kamlesh Datta Shetkar,
15) Smt. Laxmi Kamlesh Shetkar,
major of age,

16) Shri Chaturanand Datta Shetkar,
major of age, and his wife

17) Smt. Chaitali C. Shetkar,
major of age, housewife,

18) Shri Paresh Datta Shetkar,
major of age,

19) Smt. Sita Ramchandra Shetkar,
expired (through LRs.)

20) Shri Ravindra Ramchandra Shetkar,
major of age, and his wife;

21) Smt. Geeta R. Shetkar,
All residents of House No.10,
Cotto, Amona, Quepem-Goa.

..... Petitioners.

V/s.

1) Shri Ratnakar Bhaskar Shetkar,
married, retired, and his wife, major,

2) Smt. Suman Ratnakar Shetkar,
major of age, housewife,

3) Shri Ashok Bhaskar Shetkar,
major of age, and his wife;

4) Smt. Ashwini Ashok Shetkar,
major of age, housewife,

All residents of Cotto, Amona,
Quepem, Goa.

5) Shri Virangan Datta Shetkar,
major of age, and his wife

6) Smt. Mhala V. Shetkar,
major of age, housewife,

Both residents of Shirvoi,
Quepem, Goa.

7) Shri Sanvlo Datta Shetkar,
major of age, and his wife;

8) Smt. Saraswati Sanvlo Shetkar,
major of age, housewife;

9) Shri Devidas Ramchandra Shetkar,
major of age, and is wife,

10) Smt. Deepti Devidas Shetkar,
major of age, housewife,
All residents of Cotto,
Amona, Quepem, Goa.

11) Shri Shyam Ramchandra Shetkar,
major of age, and his wife;

12) Smt. Josephina Shyam Shetkar,
major,
Both residents of Sonarbhat,
Quepem, Goa

13) Miss Sumati Ramchandra Shetkar,
unmarried, resident of Cotto, Amona,
Quepem, Goa.

14) Shri Chandreshwar Bhutnath
Devasthan, through its Attorney,
Shri Chandrakant Shiva Raut Desai,
resident of Assolda, near Assolda
Bridge, Quepem, Goa.

15) Krishnath Raghunath Naik,

16) Roshan Laxman Shetkar,
Both resident of Zambaulim,
Sanguem, near Damodar Temple,
Sanguem, Goa.

..... Respondents.

Shri D. Pangam, Advocate for the petitioners.

Shri G. Teles, Advocate for the respondents No.1 to 4.

CORAM :- F.M. REIS, J.

Date :- 6 August 2015.

ORAL JUDGMENT :

Heard Mr. D. Pangam, learned Counsel appearing for the petitioners and Mr. G. Teles, learned Counsel appearing for the respondents No.1 to 4.

2. Rule. Heard forthwith, with the consent of the learned Counsel. Learned Counsel appearing for the respondents waives notice.

3. The above petition challenges an order dated 30/7/2012, passed by the learned Civil Judge, Jr. Division, at Quepem in Regular Civil Suit No.52/2004/B, whereby an application for amendment filed by the petitioners came to be dismissed.

4. Mr. Pangam, learned Counsel appearing for the petitioners has pointed out that the proposed amendment is more in a clarificatory in nature, as according to him, the petitioners desire to rely upon some documents which came to the knowledge of the petitioners subsequently. The learned Counsel has, thereafter taken me through the pleadings in the plaint, as well as the proposed amendment to point out that there is no inconsistency in the claim nor are the pleadings destructive. The learned Counsel further points out that the learned Judge by a cryptic order and without considering the rival contentions in connection with the application for amendment went on to dismiss the application. The learned Counsel further points out that the proposed amendment is very much necessary for deciding the controversy in the suit and consequently, the impugned order deserves to be quashed and set aside.

5. On the other hand, Mr. G. Teles, learned Counsel

appearing for the respondents No.1 to 4, has pointed out that the amendment is not necessary for deciding the suit as, according to him, it would change the cause of action. The learned Counsel has further pointed out that the documents which are referred to in the proposed amendment and sought to be relied upon were within the knowledge of the petitioners when the original pleadings were filed and consequently, the question of allowing the application for amendment would not arise at all. The learned Counsel has, thereafter, taken me through the application to point out that there are no reasons set out which prevented the petitioners from approaching the Court with the application for amendment prior to the date of recording of evidence in the suit. The learned Counsel, as such, points out that the petition be rejected.

6. I have considered the rival submissions and also gone through the impugned Order. No doubt, the application is hopelessly worded, but, however, I find that the amendment is clearly clarificatory in nature. The petitioners want to refer to some documents which came in their possession and accordingly draw inference on the Deed of Relinquishment and Acquittance which was executed by their ancestors. On perusal of the relief sought in the plaint, as well as the

pleadings in the suit, I find that there is no inconsistency with the claim of the petitioners in the original plaint. The pleadings to be introduced and the documents are referable to the original pleadings. The suit property is the same bearing Nos. 76/1 and 19/17 of Amona Village and restricted on the basis of the documentary evidence. The objections in the reply of the respondents are more in the nature of disputing the correctness in the allegations in the proposed amendment which can be raised in the additional Written Statement.

7. In the peculiar facts and circumstances of the case, and considering that the amendment sought to be incorporated would be necessary to decide the matter in controversy, and as the proposed amendment is not destructive to the original claim of the petitioners, I find that the learned Judge was not justified in exercising discretion to refuse leave to amend the plaint. The Apex Court in a Judgment, reported in 2012(11) SCC 341 in the case of ***Abdul Rehman and another Vs. Mohd. Ruldu and others***, at para 18, has observed thus :

“We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a

change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

8. Considering the observations of the Apex Court, I find that the learned Judge has acted erroneously in rejecting the application, which calls for interference of this Court in exercise of powers under Article 227 of the Constitution. The proposed amendment would be necessary to decide the dispute between the parties. No doubt, the petitioners would be liable to pay costs to the respondents which are quantified at Rs.5,000/- as condition precedent. The respondents would naturally be entitled to file an additional written statement and raise all the objections with regard to the proposed amendment.

9. Subject to the above, the impugned order dated 30/7/2012 passed by the learned Civil Judge, Jr. Division, Quepem is quashed and set aside. Leave granted to the petitioners to amend the plaint in terms of the application dated 6/7/2012, subject to the petitioners paying costs of Rs.5,000/- to the respondents, as condition precedent. Rule stands disposed of accordingly.

F.M. REIS, J.

ssm.