

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 241 OF 2015

MR.DAYANAND ZAIRAM NEOGI (SINCE
DECEASED) REP. BY POA MR.ANUP
ASHOKRAJ MAHATME AND 16 ORS.,

... Petitioners

Versus

MRS. PADMA PRABHAKAR BHANDARI AND
6 ORS.,

... Respondents

Shri Devidas J. Pangam, Advocate for the Petitioners.
Shri J. Abreu Lobo, Advocate for Respondent No.1.
Shri J.E. Coelho Pereira, Senior Advocate with Shri V. Braganza,
Advocate for Respondent No.2.

Coram:- C. V. BHADANG, J.

Date:- 13th June, 2016

ORAL ORDER:

Heard learned Counsel for the parties.

2. By this petition, the petitioners who are the plaintiffs are challenging the order dated 19/08/2014 passed by the learned Civil Judge Senior Division, Quepem in Civil Misc. Application No.2/2012/A in Special Civil Suit No.12/2006/A. By the impugned order the learned Trial Court has dismissed the application filed by the petitioners for amendment of the plaint by incorporation of para 11-A and for correcting the valuation of the suit from Rs.1,01,000/- (Rupees one lakh one thousand only) to Rs.1,00,000,00/- (Rupees one crore only).

3. The brief facts are that the petitioners have filed the aforesaid suit simpliciter for injunction restraining the respondents from interfering with the possession and operation of the suit mines by the petitioners.

A perusal of the plaint allegation would show that this relief is based on an alleged termination of an oral agreement which was entered into between the parties, according to the petitioners.

4. The respondents no.1 & 2, who are the original defendants contended that the suit is not properly valued and also set up a defence on the basis of two agreements dated 25/01/2005 and 27/01/2005. In consequence of such a defence being raised the petitioners filed an application for amendment for incorporation of the following para 11-A:

"11-A. The plaintiffs submit that alleged Agreement for Extraction of Iron and Manganese Ore dated 25/1/2005 and alleged Agreement for Sale of Iron and Manganese Ores dated 27/1/2005 are invalid, ab initio null and void and therefore cannot bind any parties thereto. Further the said two Agreements have not been executed by Shamsunder Zairam Neogi as claimed by the defendants."

Petitioners also sought correction of the valuation of the suit to Rs.1,00,000,00/- (Rupees One Crore only).

5. The application was opposed on behalf of the respondents no.1 &

2. The learned Trial Court after having noticed that amendments have to be granted liberally, however found that the plaintiffs cannot seek amendment which is not necessary or relevant to grant the reliefs sought in the plaint and for deciding the matter in issue. The learned Trial Court further found that there is no causal connection between the proposed amendment and the relief sought in the plaint. It was also found that the suit continues to be a suit seeking simpliciter injunction and thus the prayer for correction of the valuation was also disallowed.

6. The learned Counsel appearing for the first respondent and the learned Senior Counsel appearing for the second respondent, on instructions, state that they will not press for the contention regarding the incorrect valuation of the suit. In that view of the matter, the learned Counsel for the petitioners submits that the amendment as to valuation would not be necessary. Thus this aspect does not survive for consideration. Thus, the only question is whether the petitioners can be allowed to incorporate para 11-A in the plaint. In this regard, it is significant to note that the petitioners, although are seeking introduction of para 11-A to plead that the aforesaid two agreements are null and void, there is no corresponding amendment to the prayer clause, seeking a declaration to that effect. It is evident that the pleadings have to be in aid of the reliefs claimed. It is well settled that all such amendments which are necessary for deciding the real controversy in dispute have to be allowed. Such a finding by the

Court is a sine qua non for the grant of any amendment.

7. In the present case, as noticed earlier the suit continues to be simpliciter for injunction based on possession of the suit mines on the basis of a termination of an oral agreement. If that be so, I do not find that any exception can be taken to the finding recorded by the learned Trial Court, that there is no causal connection between amendment seeking incorporation of the para 11-A and prayer clause, as it stands today.

8. The learned Counsel for the petitioners has submitted that the petitioners can always take a collateral challenge to the agreement without seeking a specific declaration that the agreements are null and void. It is also submitted that the plaintiffs can take several grounds in the plaint, however, the relief can be based on any one of them. I do not find that this submission can be accepted, for the reason that a collateral challenge cannot be staked in the same proceedings. That apart, it is undisputed that the respondents no.1 & 2 have filed Special Civil Suit No.58/2008 and 59/2008 against the petitioners on the basis of the very same agreements in which the petitioners have raised contentions about the agreement being null and void. If that be so, the said issue would arise in the aforesaid two suits and the petitioners would be able to contest the same in these two suits.

9. Thus, I do not find that any case for interference is made out in the supervisory jurisdiction of this Court in the absence of the impugned order demonstrating any jurisdictional error, resulting into manifest injustice. With this, the Writ Petition is dismissed with no order as to costs.

C. V. BHADANG, J.

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