

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.121 of 2016**

Mr. Aires D'Costa alias
Ayres Genesio Jose Estevan
Da Costa son of late
Mr. Policarpo P.T. Da Costa,
Aged about 84 years, retired,
Green Fields, Ghotla Village,
Chembur, Mumbai.
Presently resident of Maria
Cottage, H. No.173, Nachinola
Bardez Goa Through his power
of attorney Mr. Arjun D'Costa
Son of Mr. Gaudencio G. Gusmao
D'Costa, Resident of Maria
Cottage, H.no.173, Nachinola
Bardez Goa. .. Petitioner

V/s

1. The Chief Secretary,
Govt of Goa,
Secretariat, Alto
Porvorim, Bardez Goa.
2. The Assistant Engineer,
Sub-Division-II, Div VIII
(Bldgs. South)
PWD, Fatorda, Margao,
Salcete, Goa
3. The Chief Engineer,
PWD, Altinho Panaji
Goa.
4. The Senior Town Planner,
Town & Country Planning
Department, Govt of Goa,
4th floor (A-Wing)
Osia Commercial Complex,
Margao Goa.
5. The Village Panchayat of Varca,
170/C, Shop no.19, Varca

Sports club complex,
Calvaddo, Varca, Salcete,
Goa.

6. Mr. Joaquim Alemao
The President
Varca Sports Club
Calavaddo, Varca, Salcete,
Goa.
7. M/s Varca Sports Club,
Varca Sports Club Complex,
Calvado, Varca, Salcete,
Goa.
8. Mr. Joaquim Alemao
H.No.150, Novangully, Varca,
Salcete Goa.
9. M/s HDFC Bank Ltd.,
170/C Shop No.1 and 2,
Varca Sports Club Complex,
Calvaddo Varca Salcete Goa
10. Mrs. Martus Dais
Son of Mr. Francisco Xavier Dias
- 10a. Mrs. Felicidade M. Dias
Wife of Mr. Martus Dias,
170/C, Shop No.S-1,
Varca Sports Club Complex,
Calvado Varca Salcete Goa.
11. Mr. Protus Dias
Son of Mr. Francisco Xavier
Dias
- 11a. Mrs. Lourdina Dias
Wife of Mr. Protus Dias,
170/C, Shop No.S-2
Varca Sports Club Complex,
Calvado Varca Salcete Goa

(amendment carried out
as per order dated 29/06/15)

12. Mrs. Eremita Fernandes
170/C, Shop No.S-3
Varca Sports Club Complex,
Calvado Varca Salcete Goa
13. Mr. Jose Agnelo Fernandes
Husband of Mrs. Eremita
Fernandes 170/C, Shop No.S-3
Varca Sports Club Complex,
Calvado Varca Salcete Goa.
14. Mr. Jose A.N.A.D'Souza,
170/C, Shop No.4,
Varca Sports Club Complex,
Calvado Varca Salcete Goa
15. Mrs. Effy De Souza
Wife of Mr. Jose A.N.A.D'Souza,
170/C, Shop No.4
Varca Sports Club Complex,
Calvado Varca Salcete Goa.
16. St. Anthony Medicentre Chemist
& Druggist
C/O Mr. Briano J. A. Martins
170/C, Shop No.S-4,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
17. Mr. Pedro Fernandes
170/C, Shop No.S-5,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
18. Mrs. Piedade Fernandes
Wife of Mr.Pedro Fernandes
Owner of shop No.5
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
- 19 L. N. Enterprises
170/C, Shop No.S-5,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
- 20 Mr. Arjundas S. Doyel

170/C, Owner of Shop
nos.S-6, S-7, S-8,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.

21. Mr. Alexio Vaz
170/C, Shop No.S-9,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
22. Mrs. Marita Vaz
Wife of Mr. Alexio Vaz
Owner of shop No.S-9
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
23. Corporation Bank,
Shop No.10 & 11
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
24. Mr. Aleainho Fernandes
170/C, Shop No.S-10
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
25. Mrs. Anjelina Fernandes,
Wife of Mr. Aleainho Fernandes
170/C, Shop No.S-10
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
26. Mr. Bernard Coutinho
170/C, Shop No.S-11 & S-12,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
27. Mrs. Nelvie Coutinho
Wife of Mr. Bernard Coutinho,
170/C, Shop No.S-11 and S-12,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
28. VPK Urban Co-operative Credit
Society Limited
170/C, Shop No.S-12,

Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.

29. Mr. Challs A. Fernandes
170/C, Shop No.S-13,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
30. Mrs. Ana Francisco D'Costa
Shop No.170/C, S-14,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
31. Mr. Keith D'Costa
170/C, Shop No.S-14,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
32. Mrs. Hilda D'Costa
wife of Mr. Keith D'Costa
170/C, Shop No.S-14,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
33. (Mr. Alexio Fernandes)
(deleted as per order
dt.23.01.2015)
(amendment carried out
as per order dated
23.1.2015)
(Mr. Alirio Fernandes)
170/C, Shop No.S-15
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
34. (Mr. Jose Alfonso)
(deleted as per order
dt.29.06.2015)
Mr. Francisco Alfonso
170/C, Shop No.S-16,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.
35. Mrs. Frino Alfonso
(deleted as per order
dt.29.06.2015)

(amendment carried out
as per order dated
29.6.2015)

Mrs. Flavia Alfonso
wife of Mr. Jose Alfonso
170/C, Shop No.S-16,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.

36. Mr. Hanibal D'Costa
170/C, Shop No.S-17,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.

37. Mrs. Biju Savita D'Costa
Wife of Mr. Hanibal D'Costa
170/C, Shop No.S-17
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.

38. Mr. Anthony John Rodrigues
(Reginaldo)
170/C, Shop No.S-18
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.

39. Mrs. Esmeralda J. Rodrigues
Wife of Mr. Anthony John
Rodrigues (Reginaldo)
170/C, Shop No.S-18,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.

40. Shaibaz Cuisine,
170/C, Shop No.S-18,
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.

41. Al Sharif Beef Centre
170/C, Shop No. (not known)
Varca Sports Club Complex,
Calvado, Varca, Salcete, Goa.

42. The President
The Fabrica de Igreja de Varca
Our Lady of Gloria Church

Varca Salcete Goa. .. Respondents

Mr. J. J. Mulgaonkar, Advocate for the petitioner.

Ms. P. Kalangutkar, Additional Government Advocate for the respondent nos.1 to 4.

CORAM :- C. V. BHADANG, J.

Date : 27th April, 2016.

ORAL JUDGMENT :

Heard the learned Counsel for the petitioner. Considering the limited controversy involved, as set out hereinafter, it would not be necessary to serve the unserved respondent nos.14, 15, 20, 38, 39 and 40. I find that at the highest, the respondent nos.6 and 7, who are original defendant nos.6 and 7 would be the contesting parties. They are served. However, none appears for them.

2. The brief facts are that the petitioner has filed Civil Suit Not.22/2014 in which there are 42 defendants. The present issue pertains to defendant nos.41 now deceased Gause Mohidin Bepari, who was said to be proprietor of Al Sharif Beef Centre.

3. The case made out in the plaint is that the respondent nos.6 and 7 have erected a Sports cum

Commercial Complex by encroaching on the land belonging to the petitioner. It was contended that out of said complex, Shop no.14 was allotted to now deceased Gause Mohidin Bepari, who was running "Al Sharif Beef Centre", therein. It appears that on the death of Gause Mohidin Bepari, the petitioner could not bring his legal representatives on record within time. As such, the petitioner had filed an application for condonation of delay (Exh.118-D) along with an application Exh.119-D for bringing legal representatives of defendant no.41 on record. The later application enlists in all 5 legal representatives of the deceased defendant No.41 in para 2 of the application. Both these applications were rejected by the Trial Court by separate orders dated 29/06/2015.

4. It appears that the petitioner, thereafter, filed an application Exh.71-D purportedly for amendment of the plaint, seeking the impleadment of legal representatives of Mr. Gause Mohidin Bepari. That application was rejected by the Trial Court on 28/09/2015 on the ground that on the death of a defendant, the prescribed procedure is to bring the legal representatives on record and not to file an

application for amendment.

5. The petitioner filed another application being Application Exh.D-137 professedly under Order I, Rule 10 of C.P.C., this time seeking deletion of defendant no.41 and addition of Mohidin Gause Bepari @ Gause Bepari and his wife Mrs. Sadika Gause as defendant nos.43 and 44. It was contended that after the death of Gause Mohidin Bepari, shop no.14 is in possession of these two persons, who were proposed to be added as defendants. The learned Trial Court has dismissed this application on 29/12/2015 on the ground that this is yet another attempt to bring on record the legal representatives of Gause Mohidin Bepari, by taking recourse to a different provision. The petitioner has challenged rejection of all these applications in this petition.

6. The learned Counsel for the petitioner, on instructions, states that he will not press for the challenge to the orders dated 29/06/2015 and 28/09/2015. Thus, he is confining the challenge to the order dated 29/12/2015 by which the application Exh-D-137 was rejected. It is submitted that after the death of Gause Mohidin Bepari, the shop is allotted to the proposed defendants, who are respectively the son and

the daughter-in-law of the deceased and as such, in order to effectually and completely decide the controversy in the suit, their presence before the Trial Court is necessary. The learned Counsel points out that the rejection of earlier application namely for bringing the legal representatives and amendment would not come in the way of the petitioner from claiming addition of parties/ defendants.

7. I have considered the circumstances and the submissions made.

8. It is true that earlier twice the petitioner had made an attempt to bring the legal representatives of the deceased respondent no.41 on record. However, in view of the fact that now the petitioner claims that the shop is in possession of the proposed defendants, I find that they would be necessary parties, so as to enable the Trial Court to decide the controversy in a complete and effectual manner. Sub-rule (2) of Rule 10 of Order I of C.P.C. empowers the Court "at any stage of the proceedings" either upon or without an application of either parties, to add or strike off parties whose presence before the Court may be necessary in order to enable the Court to effectually and completely

adjudicate upon and settle all the questions involved in the suit. Considering the case set up in the plaint and case made out that after the death of defendant no.41, shop no.14 is in possession of the proposed defendants, in my considered view, they would be necessary parties before the Court. This can be looked at from another angle. Had the shop been allotted or been in possession of a third party after the death of defendant no.41, the Court could have considered the prayer for addition of the parties. Thus, only because the proposed defendants also happen to be the son and daughter-in-law of the deceased defendant, would not make any material difference, if the case made out is that they are now in possession of the suit shop. The question whether the plaintiff would be able to establish this case or not need not be considered or gone into at this stage. It is trite that the plaintiff being *dominus litis* would normally be allowed to add or strike off parties. Albeit, this would be subject to the powers of the Court under Order I Rule 10(2) of C.P.C. Considering the overall circumstances, I find that the impugned order cannot be sustained. Hence, the following order is passed :

(i) The petition is allowed.

(ii) The impugned order is hereby set aside.

(iii) Application Exh.D-137 is hereby allowed.

(iv) The petitioner shall carry out the necessary addition/ amendment of the plaint within a period of four weeks from the receipt of this order before the Trial Court.

(v) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

SMA