

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 175 OF 2015**

1. Mr. Sunil Kumar, Son of late Jagdev Mahto, 51 years, married, business, Kumar Sadan, Raghuvir Smriti Nagar, H. No. 257/2B, Mercedes, Ilhas, Goa.

2. Mr. Ashok Kumar, Son of Yadunandan Prasad, married, 56 years, business, H. No. 204/P, G-1, Subham Apartment, Vasudha Colony Alto, St. Cruz, Bambolim, Goa.

.... Petitioners

Versus

1. Mr. Parasnath Singh, Son of Mr. Yadunandan Prasad, 58 years, married, business;

2. Mrs. Manoramadevi Parasnath Singh, Wife of Mr. Parasnath Singh;

Both residents of Danteshywar Residency Kirlawaddo, Chimbél Tiswadi, Post office, Ribander, Goa.

3. Charles Barromeu Menezes alias Charles Valdimir Menezes (since deceased)

3(a) Mr. Ambrose Menezes,

3(b) Mrs. Jean Menezes,

Both resident of Deira, Dubai.

3(c) Mr. Brain E. Menezes,

3(d) Mrs. Jeanette Lobelle Menezes,

Both resident of Coral Springs, Florida-33065, U.S.A.

3(e) Mr. Desmond Menezes,
Resident of Deira, Dubai.

3(f) Mrs. Fran Loveleen Menezes,
Resident of Peddem, Mapusa, Bardez,
Goa.

4. Mrs. Maria Angelica Maximiana
Menezes alias Maxy Menezes,
Both residing at Peddem, Bardez,
Goa.

5. The Secretary Village Panchayat of
Tivim, Having office at Tivim, Bardez,
Goa.

6. The Registrar of Firms, Having office
at Panaji, Goa.

7. State of Goa, Represented by Chief
Secretary, Government of Goa,
Secretariate, Porvorim, Goa.

.... Respondents

Mr. Jagannath J. Mulgaonkar, Advocate for the Petitioners.

Mr. Anthony D'Silva, Advocate for Respondent Nos. 1 and 2.

Ms. Poorna Bhandari, Additional Government Advocate for
Respondent Nos. 6 and 7.

CORAM:- S.B. SHUKRE, J.

DATE:- 1st FEBRUARY, 2016.

ORAL JUDGMENT:

Heard learned Counsel for the petitioners, learned
Counsel for respondent nos. 1 and 2 and learned Additional

Government Advocate for respondent nos. 6 and 7. None appears for respondent nos. 3, 4 and 5 who, as stated by the learned Counsel for the petitioners on instructions, are not the contesting parties before the Trial Court.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the contesting parties.

3. What is sought to be incorporated in the plaint by way of amendment is only the pleadings that there is an intention on the part of respondent no. 1 to sell the residential bungalow and the plaintiffs apprehend that respondent no. 1 may create third party rights in the suit property.

4. It is seen from the impugned order that such a proposed amendment has been refused by the Trial Court only on the ground that it would relate back to the cause of action of the suit. Learned Counsel for the petitioners submits that even if it is held to be relating back to the date of the application, the purpose of the petitioners would be served and in any case, by such an amendment, no prejudice would be caused to the contesting respondents.

5. So far as the issue of relating back to the date of amendment is concerned, the contesting defendants should not have any objection and indeed the learned Counsel for respondent nos. 1 and 2 and learned Additional Government Advocate for respondent nos. 6 and 7, on instructions, submit that they do not have any objection. However, they submit that all their contentions may be left open to be decided on merits.

6. In view of the above, the petition is allowed. The impugned order is quashed and set aside. The amendment application is allowed, subject to payment of costs of Rs.500/- each to respondent nos. 1 and 2, the main contesting respondents, within four weeks from the date of the order. The amendment now being carried out shall relate back to the date of the amendment application. Amendment be carried out within four weeks. All contentions of the parties on merits of the case are left open.

Rule is made absolute in these terms. No costs.

S. B. SHUKRE, J.