

## IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 308 OF 2015

Mr. Tulshidas Bablo Gaude alias Pokle,  
R/o H.No.619, Near M.R.F., Dhat Wada-  
Usgao, Ponda-Goa.

... Petitioner

Versus

1. Mr. Kanta Bablo Gaude alias  
Pokle, Major in age, married,

2. Mrs. Kanti Kanta Gaude alias  
Pokle, Major in age, married,

3. Mr. Narayan Bablo Gaude alias  
Pokle, Major in age, married,

4. Mrs. Vasanti Narayan Gaude  
alias Pokle, Major in age,  
married,

5. Mr. Tukaram Bablo Gaude alias  
Pokle, Major in age, married,

6. Mrs. Sita Tukaram Gaude alias  
Pokle, Major in age, married,  
All Indian Nationals and R/o H.  
No.619, M.R.F., Dhat Wada-  
Usgao, Ponda-Goa.

... Respondents

\*\*\*

Mr. Deepak Gaonkar, Advocate for the Petitioner.

Mr. Gaurish N. Agni, Advocate for the Respondents.

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

**DATE:- 23<sup>rd</sup> August, 2016.**

**ORAL JUDGMENT:**

Rule. Rule made returnable forthwith. The learned Counsel for the respondents waives service. Heard finally by consent of the parties.

2. The petitioner is the original plaintiff. The petitioner has filed Regular Civil Suit No. 20/2009/A against the respondents/defendants, which is pending before the learned Civil Judge Senior Division at Ponda. That suit, is filed for permanent and mandatory injunction on the allegation that somewhere in February, 2009, the original defendant no. 3 alongwith other defendants came to the suit property and demolished the portion of the workshop of the petitioner. It was further alleged that on 17.02.2009, the original defendant no. 1 with the help of the other defendants started doing

illegal construction in the suit property. It is also contended that the defendants have removed some portion of the mangalore tiles due to which there was seepage, more particularly in the north eastern corner of the house of the petitioner. The petitioner is praying for a permanent injunction restraining the respondents or anybody on their behalf from further extending or effecting construction in the suit structure or changing the the nature of the suit property or damaging it. Injunction is also sought for, restraining the respondents from demolishing or interfering with the workshop and the house of the petitioner. The petitioner also sought mandatory injunction to demolish the alleged illegal construction and to restore the suit property to its original condition. The petitioner is also claiming compensation of Rs.5,000/- for partly demolishing the workshop and "other consequential damages", alongwith interest.

3. Undisputedly, the petitioner has entered into the witness, and he is stated to be under cross examination. On 25.02.2014, the petitioner filed two applications, one for amendment of the plaint (Exhibit-D/53) and the other for production of the report of the Surveyor alongwith certain photographs (Exhibit-D/54). This was with a view to show the damage of the north eastern corner of the house of the petitioner, allegedly due to seepage of rain water. It is a matter of record that the self same Surveyor had inspected the suit site and his earlier report is also on record of the learned Trial Court.

4. The applications were opposed on behalf of the respondents.

5. The Trial Court by an order dated 06.09.2014 rejected the application (Exhibit-D/53), for amendment *inter-alia* on the ground that the proposed amendment is hit by the proviso to Order VI, Rule 17

of CPC. The learned Trial Court found that the amendment would change the nature of the case and as such, the amendment could not be allowed. The application (Exhibit-D/54) was rejected mainly on the ground that the documents are of the year 2014 and they have been brought into existence much after filing of the suit. The learned Trial Court found that the party cannot create and manufacture documents in 2014 for the cause of action that has been accrued in 2009. The other reason is that the amendment application having been dismissed, there was no scope for grant of leave to produce the additional documents.

6. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

7. The learned Counsel for the petitioner points out that in the year 2009, the same Surveyor

had inspected the site and has furnished the report, which is placed on record. It is submitted that on 16.01.2014, the services of the same Surveyor were taken for inspection of the house of the petitioner and the Surveyor has given the report on 20.01.2014. It is submitted that these are subsequent developments, which are required to be brought on record. The learned Counsel points out that the provisions to Order VI, Rule 17 of CPC, cannot come in the way of the petitioner, in such a case. It is submitted that the Trial Court erred in coming to the conclusion that the proposed amendment would change the nature of the suit.

8. On the contrary, the learned Counsel for the respondents has supported the impugned orders. The learned Counsel points out that the suit is only seeking mandatory and permanent injunction in respect of the workshop and the construction carried out by the respondents. The learned Counsel points

out that compensation claimed is also in respect of the workshop and as such a claim for damage to the suit house because of the alleged percolation of water, would change the nature of the suit.

9. I have carefully considered the rival circumstances and the submissions made.

10. As noticed earlier, although the petitioner has entered the witness box in the year 2011, he is still stated to be under cross examination. A bare perusal of the plaint allegations and the reliefs claimed would show that it is in respect of the alleged demolition of the workshop and the alleged construction taken up by the respondents on the northern side of the house of the petitioner, touching the common wall. Apart from permanent and mandatory injunction, the petitioner has also claimed damages for part demolition of the workshop as also "other consequential damages". Considering

the allegations in the plaint as a whole, it cannot be accepted that the proposed amendment would change the nature of the suit. On the contrary, the proposed amendment would be necessary for complete and effective disposal of the dispute. It only seeks to bring on record certain aspects noted by the Surveyor in his report. In view of the fact that the Surveyor's report is of the year 2014, it cannot be accepted that the petitioner could have produced the same, prior to commencement of the trial. In my considered view, the proviso to Rule 17 of Order VI of CPC, would not come in the way of the respondents. It is needless to mention that the respondents would get an opportunity to file additional written statement if any, and to cross examine the petitioner as well as the Surveyor in respect of the Surveyor's report. Thus, it cannot be said that any material prejudice would be caused if, the amendment and the production of the documents, are allowed.

11. For these reasons, the following order is passed:

**O R D E R**

(a) The petition is allowed.

(b) The impugned orders dated 06.09.2014, are set aside.

(c) The applications Exhibit-D/53 and Exhibit-D/54, are hereby allowed, as prayed.

(d) Needless to mention that the respondents shall be entitled to file additional written statement to the amended plaint.

(e) Rule is made absolute, in the aforesaid terms, with no order as to costs.

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