

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 351 OF 2016

**MR. LINDO JERONIMO FURTADO AND 3
ORS., ... Petitioners**

Versus

**MR. JOAO INACIO FURTADO AND 4
ORS., ... Respondents**

Adv. Ryan Da Piedade Menezes for the Petitioners.

Adv. Somnath B. Karpe for Respondent no.4.

**Coram:- C. V. BHADANG, J.
Date:- 14th June, 2016**

Oral order:

By this petition, the petitioners, who are the original plaintiffs are challenging the order dated 26/2/2016 (below Exhibit D-124) passed by the learned Senior Civil Judge, Margao in Regular Civil Suit no.583/2010/III.

2. The brief facts are that the petitioners have filed the aforesaid suit for declaration of title in respect of the structures situated in land survey nos. 12/6 and 12/7 of village Sernabatim admeasuring 4325 square metres, which is better known as Adampol. A perusal of

the prayer clause of the plaint shows that the petitioners are seeking a declaration that the respondents no.1 does not have any right, title or interest in any structure existing either in survey nos. 12/6 or 12/7 of village Sernabatim Taluka of Salcete. The petitioners are praying for permanent injunction restraining the respondents nos. 1, 2 and 3 i.e the original defendants or anybody on their behalf from interfering with the said survey numbers.

3. The respondent no.4 filed an application for impleadment in the suit on 1/9/2015. It was claimed that the intervenor is the son of Joao Menino Furtado who died about 30 years back and that the intervenor is the co-owner of the suit property surveyed under survey nos. 12/7 along with the plaintiffs. In short, it was contended that the intervenor being a co owner his interest and rights are likely to be affected by the decision in the suit and therefore, he had prayed for impleadment. By a subsequent application dated 11/2/2016, a specific prayer was made about the intervenor being added as a defendant.

4. The application was opposed on behalf of the petitioners on the ground that the dispute in the suit is purely between the petitioners and the respondent nos. 1 to 3. It was also contended that the intervenor had not produced any material to establish even prima facie that he had any right, title or interest in the suit property or he has any connection with Joao M. Furtado. It was further denied that the name

of late Joao M. Furtado is recorded as a co owner in respect of the suit property.

5. The learned Trial Court although made certain observations in para 5 of the impugned order against the prayer for intervention ultimately the learned trial Court allowed the application "in the interest of justice and fair play". Feeling aggrieved the petitioners are before this Court.

6. I have heard the learned counsel for the petitioners and the learned counsel appearing for respondent no.4 as also the respondent nos. 1 to 3.

7. The contesting parties are the petitioners and the respondent no.4.

8. It is submitted on behalf of the petitioners that the petitioners being plaintiffs and dominus litus can decide as to who should be joined as defendants. It is contended that the intervenor has not made out any case as to how the right or interest of the intervenor would be affected, in as much as the relief claimed is only against the respondents nos.1 to 3. It is also submitted that the intervenor has not established his relation with Joao Menino Furtado. It is submitted that the impugned order does not record the satisfaction as is required

under Order 1 Rule 10 (2) of C.P.C.

9. On the contrary the learned counsel for the respondent no.4 has supported the impugned order. The learned counsel has pointed out that the observations in para 5 of the impugned order that no document is produced by the intervenor to show his right to the suit property is not correct. He has pointed out to a Form No. I and XIV in respect of the land survey no.12/7 which shows that the names of Anthony Furtado who is the predecessor of the petitioners and Joao Menino Furtado is shown as occupant. It is also submitted that the application is supported by an affidavit to show the relationship between the intervenor and Joao M. Furtado.

10. I have considered the rival circumstances and the submissions made. Under Order 1 Rule 10 (2) C.P.C the Court may at any stage of the proceedings either upon or without the application of either party, order that the name of any party be struck out or be joined or impleaded whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. Thus the Court has a wide jurisdiction and power under Order 1 Rule 10 (2) of C.P.C, which power albeit has to be exercised judiciously. The normal rule of the plaintiff being domus litus is subject to the aforesaid power of the Court. It is true

that the impugned order does not specifically record a finding or satisfaction that presence of the intervenor is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. The application has simply been allowed by saying that it is allowed in the interest of justice and fair play. However that alone may not be decisive of the matter. A perusal of the Form I and XIV in respect of the property survey no. 12/7 shows that the name of Joao Menino Furtado along with Anthony Furtado is shown in the occupant's column. The petitioners are claiming to be the successors of Anthony Furtado. The intervenor is claiming to be the son and successor of Joao M. Furtado. If that be so, presence of the intervenor would be necessary in order to enable the Court to completely and effectively decide the controversy in the suit. Although the petitioners are claiming a relief against the respondent nos. 1 to 3, the allegations in the plaint clearly show that it is a suit for declaration of title in respect of certain structures standing in land survey nos. 12/6 and 12/7. It may be worthwhile to notice that in para 3 of the written statement filed by the respondent nos. 1 to 3 they are claiming rights in respect of matriz no.421 in the name of late Diogo Filipe Furtado and they further contend that the said property is not registered in the Land Registration Office and includes whole of the property now surveyed under no.12/6 and part of the property surveyed under survey no.12/7. In such circumstances, I find that the impleadment of respondent no.4 is necessary.

11. It may be significant to note that the order per se would not result in manifest injustice to the petitioners and on the contrary would enable the Court to completely and effectively decide the controversy in the suit. Thus, the petition is without merit and the same is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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