

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 669 OF 2016**

MR. MARIL PETER NAZARETH ... Petitioner
Versus
XACUNTALA ELVINA ANTONIO
PINTO AND 2 ORS. ... Respondent

Shri Devidas J. Pangam, Advocate for the
Petitioner.

Shri J.P. Mulgaonkar, Advocate for Respondent
No.1.

Shri Ajit R. Kantak, Advocate for Respondents
No.2 & 3.

Coram:- C. V. BHADANG, J.

Date:- 20th October, 2016

ORAL ORDER :

The challenge in this petition is to the order dated 29/06/2016 passed by the learned Civil Judge Junior Division at Panaji in Regular Civil Suit No.281/2015/D by which application (Exhibit 11) filed by the petitioner under Order 1 Rule 10 of the Civil Procedure Code (CPC, for short) for amendment of plaint has been dismissed.

2. The brief facts are that the petitioner has filed the aforesaid suit against the

respondent no.1 for mandatory/permanent injunction and consequential reliefs. The petitioner is inter alia seeking an injunction directing the respondent no.1 not to interfere with the possession of the petitioner over the suit plot and for a declaration that the petitioner has an easementary/preemptive right over the suit plot. The suit was filed on 7/12/2015. A little prior thereto, that is on 9/11/2015, the respondent no.1 and her brother had sold a portion of the suit plot in favour of the respondent nos.2 & 3. In such circumstances, the petitioner filed an application under Order 1 Rule 10(2) of CPC for impleading the respondent nos.2 & 3 as party defendants to the suit.

3. The application was opposed on behalf of the respondent no.1. The learned Trial Court by the impugned order has found that the plaint does not disclose any cause of action against the proposed defendants. The learned Trial Court

further found that there are no pleadings in the plaint making any averments against the proposed defendants nor any relief is sought against them. The learned Trial Court has noticed that even after this aspect was brought to the notice of the petitioner, no amendment was sought. Thus, the learned Trial Court has found that the pleadings in the plaint in no manner disclose that the proposed defendants are necessary or proper parties. It has also been noticed that the Sale Deed dated 9/11/2015 is prior to the filing of the suit and, as such, the proposed defendants cannot be said to be transferee pendent lite. In that view of the matter, the application has been dismissed which order is challenged in this petition.

4. I have heard Shri Pangam, the learned Counsel for the petitioner, Shri Mulgaonkar, the learned Counsel for the respondent no.1 and Shri Kantak, the learned Counsel for the respondent nos.2 & 3. With the assistance of the learned

Counsel for the parties, I have gone through the relevant records and the impugned order passed.

5. It is submitted by the learned Counsel for the petitioner that the proposed defendants would be necessary/proper parties inasmuch as the part of the disputed property has been transferred in their favour. It is submitted that the fact that the property has been so transferred prior to the filing of the suit has no relevance as under Order 1 Rule 10(2) of CPC, it is for the Court to examine whether a particular party is a necessary or a proper party and can accordingly direct addition or striking out of the parties. It is submitted that the respondent no.1 in the written statement has not disputed about the transfer of the suit property in favour of the proposed defendants i.e. respondent nos.2 & 3. The learned Counsel points out that the contents of the written statement are also part of pleadings and, as such, the learned Trial Court was not

right in holding that there are no pleadings. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Amit Kumar Shaw & Anr. V/s. Farida Khatoon & Anr. (2005) 11 SCC 403**, in particular, para 9 thereof. It is submitted that the very object of Order 1 Rule 10 of CPC is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike off or add parties can be exercised by the Court at any stage of the proceedings. He, therefore, submits that the impugned order suffers from infirmity requiring interference.

6. On the contrary, the learned Counsel for the respondent no.1 as well as the learned Counsel for the respondents no.2 & 3 have supported the impugned order. It is submitted that the Court has to first find whether the proposed party is either necessary or a proper party and in the present case it is not demonstrated that the proposed defendants would

be either necessary or proper parties. It is pointed out by the learned Counsel for the respondent nos.2 & 3 that the application is not bonafide inasmuch as the petitioner has chosen not to amend the plaint or the prayer clause so as to incorporate any averments or prayers against the proposed defendants. It is also pointed out that although the Sale Deed dated 9/11/2015 is executed by the respondent no.1 and her brother namely Teofilo Fernando, he is not made party to the suit nor his impleadment is sought. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***National Textile Corporation Limited V/s. Nareshkumar Badrikumar Jagad & Ors. (2011) 12 SCC 695.***

7. I have carefully considered the rival circumstances and the submissions made. Normally, the plaintiff being dominus litus, can decide as to who should be arrayed as party defendants to the suit. This privilege enjoyed

by the plaintiff is subject to the powers of the Court under Order 1 Rule 10(2) of CPC whereunder the Court is empowered to either add or strike out parties. In a case where there is a prayer for addition of parties the Court has either to find that the proposed party is either a necessary or a proper party to the suit. Thus, the finding that proposed defendant is either a necessary or a proper party is a sine qua non for allowing such addition. The question whether a particular party is necessary or not would depend upon facts and circumstances of each case.

8. In the present case, the petitioner is claiming certain rights on the basis of preemption and/or prescription against the respondent no.1 in respect of the suit land. A part of the property was transferred prior to the filing of the suit in favour of the respondent nos.2 & 3. The petitioner did not choose to make them parties to the suit. That

apart, even when the application for impleadment was made there was no prayer for addition of any averments in the body of the plaint or the prayer clause against the proposed defendants. It is further significant to note that the petitioner has neither added the brother of the respondent no.1 (who is one of the transferees) nor sought his impleadment in the application. Thus, the prayer does not appear to be bonafide. The Trial Court has mainly found that the plaint has to contain some averments which show that there is some cause of action against proposed defendants and there is some relief sought against them.

9. In para 12 of the judgment in the case of **National Textile Corporation Limited** (supra), the Hon'ble Apex Court has inter alia held that pleadings and particulars are necessary to enable the Court to decide the rights of the parties in a trial. Thus, the existence of proper pleadings is the very basis for a Court

to form an opinion as to whether the proposed defendant is a necessary or a proper party. In the absence thereof, no exception can be taken to the impugned order. I do not find that the impugned order suffers from any infirmity so as to require interference in the exercise of the supervisory jurisdiction of this Court, under Article 227 of the Constitution of India. The petition is accordingly dismissed with no orders as to costs.

C. V. BHADANG, J.

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