

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 675 OF 2016

1. Mr. Santimano Moraes,
Aged 58 years,
s/o late Augostinho Moraes,
and his wife;
2. Mrs. Sylvia Bernadine Costa e Moraes,
Aged 42 years, both r/o H. No.2330,
Bencleawado, Cuncolim,
Salcete, Goa.
Plaintiff no.2 herein is represented by her
Power of Attorney plaintiff no.1 herein
(Regd. Address) Petitioners

V e r s u s

1. Mrs. Albertina Batistina Moraes,
Major, widow of Elorio Lourente Moares,
& Sons;
2. Mr. Derrick Moraes,
Major and his brother
3. Mr. Khazanji Moraes,
Major and his wife;
4. Mrs. Ruby Moraes,
Major all residents of H. No.2138,
Bencleawado, Cuncolim,
Salcete, Goa.

5. Mr. Isidoro Pereira,
Major, son of Rosario Pereira
and his wife;
6. Mrs. Miltobia Pereira,
Major,
Both r/o H. No.1104, Milleanwaddo,
Cuncolim, Salcete, Goa.
7. Mr. Evangelisto Almeida,
Major, s/o. Late Peter Xavier Almeida,
and his brother.
8. Mr. Abel Almeida,
Major both r/o H. No.2133/A,
Bencleawado, Cuncolim,
Salcete, Goa.
9. Smt. Jahida Bi Shaikh,
Alias Zaida Bi Shaikh,
Alias Shaikh Zaida Bi,
Aged 60 years, wife of
Late Abdul Gafar Shaikh,
Housewife, r/o H. No.2565(42),
Carogem, Cuncolim, Salcete, Goa.
(Registered address) Respondents

Shri C. A. Coutinho, Advocate for the Petitioners.

Shri Vallabh Desai, Advocate for the Respondent no.9.

None for the rest of the respondents.

CORAM: C. V. BHADANG, J.
DATE: 2nd September, 2016.

JUDGMENT:

Rule. Rule made returnable forthwith. The learned counsel for the respondent no.9 waives service. Heard finally by consent of the parties.

2. The petitioners, who are the original plaintiffs in Regular Civil Suit No.333/2010/A before the learned Senior Civil Judge at Margao, are challenging the order dated 30/4/2016 passed by the learned trial Court, by which the application filed by the respondent no.9 herein/third party for addition of the party has been allowed.

3. The brief facts are that the petitioners have filed the aforesaid suit for declaration that the petitioners are the owners of the eastern half portion of the property surveyed under no.433/7 of Cuncolim village admeasuring approximately 912 square metres. The entire survey number is admeasuring 1825 sq.mtrs. The petitioners are seeking a further declaration with the names of late Magadelina Moraes and Maria S. Pereira have been wrongly included in the

occupant's column and Form No.I and XIV of the said property and for deletion of their names from the revenue record.

4. The respondent nos. 1 to 8 are the original defendants in the suit.

5. The petitioners filed an application for intervention on the ground that she came to know about the filing of the suit, obtained the certified copy of the plaint and thereafter filed the application for intervention. In short according to the respondent no.9, there is a "clash of interest which jeopardizes the interest of the Third Party/Respondent no.9 and as such the intervention is necessary." During the course of the arguments at bar, the learned counsel for the respondent no.9 states that the respondent no.9 is claiming to be in adverse possession of the western portion of the land survey no.433/7.

6. The learned trial Court has relied upon the documents namely: (i) Form No.1 and XIV of survey

no.433/7 (ii) Photograph of the hut (iii) Survey Plan of survey no.433/7 (iv) Municipal Appeal (v) Notice dated 30/12/2009 of the Appeal No.Min.(UD)/38/2009 and (vi) Affidavit of respondent no.1 in favour of respondent no.9. After considering this the learned trial Court has observed thus in para no.10 of the impugned order:

Therefore, I find that there is substance in the case of the third party applicant that as soon as she came to know about the present suit, she applied for certified copy of the plaint and came to know that the plaintiffs by the present suit have also staked their claim in the said property under the said survey no.433/7 and therefore, there is clash of interest, which jeopardizes her interest in the suit property. Hence the third party applicant's intervention in the present suit is of utmost importance and necessary for the third party applicant to safeguard her interest in the portion of the said property claimed by her, otherwise certainly irreparable loss will be caused to the third party applicant and her family, which could not be compensated in terms of money as she will be deprived off proving her claim on merits. On the contrary, no prejudice will be caused to the plaintiffs as they will also

get the opportunity to prove their case on merits.”

7. Feeling aggrieved the petitioners are before this Court.

8. I have heard Shri Coutinho, the learned counsel for the petitioners and Shri Desai, the learned counsel appearing for the respondent no.9.

9. It is pointed out by the learned counsel for the petitioners that in the suit the petitioners are only claiming relief against respondent nos.1 to 8 and that too in respect of the correction of the entries in the revenue record, namely Form No.I and XIV of the land survey no.433/7.

10. The learned counsel points out from the judgment and order dated 5/5/2009 passed by the Goa Municipalities Appellate Tribunal in Municipal Appeal No.7/2008 and in particular para 7 thereof in which it has been held that admittedly the house of respondent no.9 (who was the

appellant in the said appeal) is in survey no.433/6 and not 433/7 as alleged in the appeal memo. The learned counsel also points out to the reply dated 6/11/2007 sent by Advocate Gomes on behalf respondent no.9 in which it is claimed that her house is existing in the property bearing survey no.433/6 and not in survey no.433/5 or 433/7. He therefore submits that the respondent no.9 has not made out any case of she having any direct legal interest in the property bearing survey no.433/7. It is submitted that the learned trial Court has not recorded any finding whether the respondent no.9 is either a necessary or a proper party. The learned counsel has placed reliance on the decision of the Supreme Court in the case of **Ramesh Hirachand Kundanmal Versus Municipal Corporation of Greater Bombay** (1992) BBCJ (SC) 136 and the decision of this Court in the case of **Shri P.M.A Hakeem & others Vs. The U.P. Co-operative Spinning Mills Federation Ltd. & Ors. (2002) (3) ALLMR 389.**

11. On the contrary, the learned counsel for the respondent no.9 has pointed out the plaint allegations. He

submits that the names of plaintiffs are not shown in the Form No.I and XIV of survey no.433/7. He therefore, submits that as the suit involves a claim in relation to the land survey no.433/7 in which the respondent no.1 is claiming rights by adverse possession in respect of the western half, the respondent no.1 is a necessary party. The learned counsel points out that this will ensure that there is no multiplicity of the proceedings. He, therefore, supports the impugned order.

12. I have carefully considered the rival circumstances and the submissions made. In the case of **Ramesh Kundanmal** (supra), the Hon'ble Apex Court has held thus in paras 10 and 14 of the judgment):

(10) The power of the court to add parties under Order 1 Rule 10, Civil Procedure Code, came up for consideration before this court in Razia Begum. In that case it was pointed out that the courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the court and that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the

subject matter of the litigation whether it be the questions relating to movable or immovable property.

(14) It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that person must be

directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally, that is, by curtailing his legal rights. it is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.*, (1956) 1 All E.R. 273 wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Miegiet Compagnie S. A. V. Bank of England*, that their true rest lies not so much in an analysis of what are the constituents of the applicants rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated: "The test is May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights."

13. It can thus be seen that, as held by the Supreme Court the main object of the rule is not to prevent multiplicity of actions though it may incidentally have that effect. It has been held that what makes a person a necessary party is not that he has relevant evidence to give

on some of the questions involved, which would only make him a necessary witness. It has been held that in order to succeed in getting himself impleaded, as a party it has to be shown that he has a direct interest or legal interest in the subject matter of the suit.

14. In the present case, the petitioners are seeking a declaration in respect of the eastern portion admeasuring approximately 912 sq.mtrs of land from out of land survey no.433/7 and for the correction of the revenue record. None of the documents, which have been relied upon and considered by the the trial court show the name of the respondent no.9. Be that as it may, even on her own saying the respondent no.9 is claiming right on the basis of adverse possession of the western portion of the land survey no.433/7. In my considered view on the basis of the rival contentions as set up on behalf of the petitioners and the respondent no.9 and the documents as produced and relied upon by the trial Court it cannot be said that the respondent no.9 is either a necessary or a proper party to the suit. In the result the petition succeeds. The impugned order is quashed

and set aside. Needless to mention that this Court has not expressed any opinion on the merits of the rival contentions and this shall not come in the way of respondent no.9 from filing an independent suit it so advised. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/