

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 772 OF 2016

Mr. Lourenco A. Rodrigues,
Son of late Constancio Rodrigues
Major, Business,
r/o A4, Skylark Apartment,
Menezes Braganza Road,
Panaji Goa.

... Petitioner

Versus

1. Smt. Invencao Santa Cruz,
Assuncao de Cunha alias
Assumption Rodrigues,
major, housewife,
Resident H. No.273,
Vazem, Shiroda Goa.

2. Mr. Antonio Fatima Rodrigues,
Son of Luis Caetan Rodrigues,
major in age, Landlord,
C/o Anna Aurola Dias,
Tolyawado,
Borim, Ponda Goa,

... Respondents

Mr. Joseph Vaz, Advocate for the petitioner.

Mr. A. Kakodkar, Advocate for the respondents.

Coram:- F. M. REIS, J.

Date:- 5th December, 2016

ORAL JUDGMENT

Heard Mr. J. Vaz, learned counsel appearing for the petitioner and Mr. A. Kakodkar, learned counsel appearing for the respondents.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respondents waives service.

4. Upon hearing the learned counsel appearing for the respective parties, a short point for consideration is whether the learned Judge was justified to dismiss the application filed by the petitioner to correct the prayer clause to incorporate the name of new surveyor who has prepared a plan in connection with the subject property.

5. Mr. Vaz, learned counsel appearing for the petitioner has pointed out that the petitioner has been permitted to produce a survey report of the surveyor in support of his case. But however, on account of inadvertence the name of the earlier surveyor is figuring in the prayer clause of the plaint. The learned counsel further submits that recording the name of the earlier surveyor itself is redundant as according to him the suit is filed to remove the encroachment carried out by the respondents which is disputed and as such the report produced by the petitioner would be in support of his case put forward in the pleadings. The learned counsel thereafter has taken me through the impugned order to point out that the learned Judge has erroneously passed the impugned order.

6. Mr. A. Kakodkar, learned counsel appearing for the respondents has fairly states that recording the name of the earlier surveyor in the prayer clause itself is redundant as according to him, the petitioner may delete the name of the earlier surveyor as referred to therein.

7. I have considered the submissions of the learned counsel and I have also gone through the records. It is not disputed that by an order dated 04.07.2014 the amendment as proposed by the petitioner to paras 4 and 13 of the plaint came to be allowed. On perusing the averments at para 4 of the amended plaint, the name of the surveyor Bhaktaraj Z. Tari figures and naturally his name had to be incorporated in the prayer clause (b) of the plaint. In such circumstances, as the earlier amendment was already granted, I find that the learned Judge was not justified to refuse leave to correct the name of the surveyor in the prayer clause (b) of the plaint. As such, the petitioner is entitled for leave to amend the plaint and delete the name of the earlier surveyor Kiran Naik and incorporate the name of said Bhaktaraj Z. Tari in the prayer clause (b) of the plaint. Amendment to be carried out within two weeks from today.

8. In view of the above, I pass the following :

ORDER

- (i) The impugned order dated 20.04.2016 is quashed and set aside.
- (ii) The petitioner is permitted to amend the plaint in

the light of the observations made herein above within two weeks from today.

- (iii) Rule is made absolute in the above terms.
- (iv) The petition stands disposed of accordingly.

F. M. REIS, J.

at*