

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 44 OF 2015

1. Mr. Laxmikant @ Bitlo Atma Naik, s/o
Atma Naik, Aged 48 years,
2. Mr. Mangaldas Atma Naik, s/o Atma
Naik, Aged 51 years,

Both r/o H. No. 202, Mahalaxmi,
Bandora, Ponda-Goa.

.... Petitioners

Versus

1. Shri Narcinva Vishwanath Chari, s/o
Vishwanath Chari, aged about 64
years, r/o H. No. 204/A, Mahalaxmi,
Bandora, Ponda-Goa.
2. Smt. Suman Gangaram Naik, wife of
Gangaram Naik, Aged about 59
years,
3. Shri Kishor Gangaram Naik, s/o
Gangaram Naik, Aged about 39
years,
4. Shri Dhiresb @ Sandesh Gangaram
Naik, s/o Gangaram Naik, Aged about
36 years,
5. Shri Sanjay Gangaram Naik, s/o
Gangaram Naik, Aged about 34
years,
All r/o H. No. 205, Mahalaxmi,
Bandora, Ponda-Goa.
6. Shri Raghupati Ramkrishna Bhandari,
s/o Ramkrishna Bhandari, Aged 66

years, Landlord and his wife,

7. Smt. Jayanti Raghupati Bhandari,
wife of Shri Raghupati Bhandari,
Aged 59 years, Housewife,
Both r/o H. No. 1207, Mahalaxmi,
Bandora, Ponda-Goa. Respondents

Mr. Pranay A. Kamat, Advocate for the Petitioners.

Mr. Gaurish Agni, Advocate for Respondent No. 1.

None appears for Respondent Nos. 2 to 7.

CORAM:- S.B. SHUKRE, J.

DATE:- 22nd FEBRUARY, 2016.

ORAL JUDGMENT:

Heard. Rule. Rule made returnable forthwith. Heard finally by consent.

2. After considering the arguments of both sides and on perusal of the documents forming part of the paper book of this Writ Petition, including the application for amendment, reply of the plaintiffs and the impugned order, I find that the most relevant aspect of this case, as to whether or not, the proposed amendment is relevant for determination of the real controversy involved in this case, has not been considered at all by the

learned Civil Judge. The proposed amendment does not include any averments regarding the allegation of encroached area forming part of the property subsequently purchased by respondent nos. 5 and 6 and if this is so, the question of relevancy of proposed amendment for determination of the controversy involved in this case becomes important. The matter therefore, deserves to be remanded back to the trial Court for determining the said important aspect of the whole case.

3. In the result, the Writ Petition is allowed. The impugned order is quashed and set aside. Matter is remanded back to the trial Court for deciding the application for amendment of the written statement afresh in accordance with law.

4. Rule is made absolute in these terms. No costs.

S. B. SHUKRE, J.

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