

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 979 OF 2016

1. Teotonio Karl das d. Alemao
Son of late Fidelis Alemao,
Landlord, Major,
 2. Smt. Alzira N. Alemao,
Wife of late Fidelis Alemao,
Landlady, Major in age,
Both residing at House No.58,
Nagwado, Betalbatim,
Salcete Goa.
- ... Petitioners

V e r s u s

1. Mr. Olavo Antonio Do P. S. Alemao
Son of late Teotonio X. de N Alemao,
Landlord, Major in age,
 2. Mrs. Jeanette Alemao,
Wife of Mr. Olavo Antonio Do P. S. Alemao,
Major in age,
Both residing at House No.62,
Nagwado, Betalbatim,
Salcete Goa.
- ... Respondents

Mr. Sudin Usgaonkar, Senior Advocate with Ms Tanvi Kamat Ghanekar, Advocate for the petitioners.

Mr. P. S. Lotlikar, Advocate for the respondents.

Coram:- F. M. REIS, J.

Date:- 1st December, 2016

ORAL JUDGMENT

Heard Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the petitioners and Mr. P. S. Lotlikar, 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 petitioners and the respondents, the challenge in the above petition is to an order dated 16.03.2016 whereby the applications filed by the petitioners at Exhibits 15 and 16 came to be rejected.

5. Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the petitioners has pointed out that the counter claim filed by the petitioners is on the ground that there was a partition executed between the parties which led to an agreement between them way back in the year 2012 and that for the first time as the respondents showed their disinclination to honour the terms of such agreement, the petitioners filed an application for amendment to introduce the counter claim. The learned Senior Counsel further pointed out that the counter claim is basically to partition the property on the basis of such agreement signed between the parties. It is further submitted that the suit filed by the respondents is to partition the same property and as such as the dispute in the counter claim is referable to the claim raised by the respondents in the suit, the learned Judge was not justified to dismiss the applications filed by the petitioners. The learned Senior Counsel also pointed out that the other application was to correct the typographical error to delete the word "plaintiff" and insert the word "plaint" in the written statement. The learned Senior Counsel further pointed out that as the cause of action to file the counter claim arose to the petitioners before filing the written statement, the learned Judge was not justified to pass the impugned order and reject the application to introduce the counter

claim.

6. Mr. P. S. Lotlikar, learned counsel appearing for the respondents however points out that the claim put forward in the counter claim itself is barred by limitation and as such the learned Judge was justified to dismiss the application for leave to introduce the counter claim.

7. I have considered the submissions of the learned counsel and I have also gone through the records. The provisions of Order VIII Rule 6 of the Civil Procedure Code have been introduced essentially to give an opportunity to the defendant in the suit to raise a counter claim in connection with the cause of action as pleaded in the plaint or a cause of action in respect of the subject suit property which forms part of the claim put forward by the plaintiff. Such counter claim is basically a cross suit which has been statutorily permitted to be introduced by the defendant in order to avoid multiplicity of the suits and to enable the Court to pass a common judgment in connection with a suit and the counter claim. The only objection to such introduction of counter claim is that the counter claim has to come within the pecuniary jurisdiction

of the Court and the cause of action for filing such counter claim should arise before the filing of the written statement.

8. In the present case, it is the contention of the petitioners that the cause of action for filing such counter claim arose when the respondents filed the suit for partition. It is also not disputed that the counter claim filed by the petitioners is within the pecuniary jurisdiction of the Trial Court. In such circumstances, I find that the learned Judge was not justified to pass the impugned order and reject the application filed by the petitioners to amend the written statement to introduce the counter claim. Apart from that, there is no reason to refuse to correct the typographical error as sought by the petitioners to delete the word "plaintiff" and add the word "plaint". In such circumstances, the application for condonation of delay at Exhibit 16 is misconceived and deserves to be rejected. Needless to say that the defence of the respondents to such counter claim including the contention that the claim itself is barred by limitation is left open to be examined by the learned Judge on its own merits in accordance with law.

9. Subject to the above, I find that the impugned order passed by the learned Judge dated 16.03.2016 cannot be sustained and deserves to be quashed and set aside. Hence, I pass the following :

ORDER

- (i) The impugned order dated 16.03.2016 is quashed and set aside.
- (ii) The application filed by the petitioners at Exhibit 15 is allowed and the petitioners are accordingly permitted to introduce the counter claim as prayed for and correct the typographical error referred to herein above.
- (iii) Needless to say that all the contentions of the respondents on merits of such counter claim are left open to be examined by the learned Judge on its own merits in accordance with law.
- (iv) Rule is made absolute in the above terms.
- (v) The petition stands disposed of accordingly.

F. M. REIS, J.

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