

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1156 OF 2016

VILLAGE PANCHAYAT OF KUMBHARJUA,
THR. ITS SECRETARY/SARPANCH., ... Petitioner
Versus
MALA PLOT OWNERS ASSOCIATION, REP.
BY ITS CHAIRMAN, SHRI. VISHNUDAS
N. HALARNKAR., ... Respondent

Shri Nilesh V. S. Shirodkar, Advocate for the petitioner.

Coram:- F. M. REIS, J.

Date:- 23rd December, 2016

P.C.

Heard

2. The challenge in the above petition is to the leave granted to amend the plaint by the learned Civil Judge, Junior Division at Panaji in Regular Civil Suit No.41/2009/C by the impugned order dated 25.09.2014.

3. The learned Counsel appearing for the petitioner has vehemently argued to contend that the respondent has failed to establish the locus standi to file the suit to claim the relief sought in the suit in respect of the subject property. The learned Counsel has thereafter taken me through the proposed amendment at para 2(A) to point out that it is contended by the respondent that the property originally belonged to Jose De Sa which would clearly mean that the pleadings are inconsistent

with the original plaint. It is also submitted that the suit is filed by only 12 persons through an association claiming right to the property admeasuring more than 60000 sq. mts. It is also pointed out that as the respondent has not disclosed any right to the subject property, the question of granting any relief to the respondent would not arise. The learned Counsel further points out that the proposed amendment is inconsistent with the original plaint and as such, the learned Judge has erroneously exercised its discretion under Order VI Rule 17 of CPC. The learned Counsel further submits that the application for amendment itself is belated and as such, the application deserves to be dismissed on the ground of delay and laches. The learned Counsel has thereafter taken me through the impugned order passed by the learned Judge to point out that the learned Judge has erroneously granted leave to the respondent to amend the plaint.

4. I have considered the submissions of the learned Counsel for the petitioner and I have also gone through the record.

5. The contention of the petitioner that the respondent has no locus to file the suit is a matter which can be raised in the written statement and the learned Judge can proceed to frame an issue based on the pleadings of the parties and decide such issue after hearing the parties.

6. As far as the contention of the learned Counsel appearing for the petitioner that there is no averments that the respondent is the owner of the subject property, I find that on perusal of the

para 2 of the original plaint there is specific averments therein that the plaintiff is claiming to be the owner of a subject property referred therein. Para 2(A) of the proposed amendment is to clarify the origin of title of the plaintiff. Apart from that the learned Judge has rightly noted that the application for leave to amend is a pre-trial amendment and as such the parameters to grant leave to amend the plaint are clearly specified by law. Consequently, I find that there is no jurisdiction error committed by the learned Judge while passing the impugned order. The respondent can raise all the contentions in the additional Written Statement or file application for appropriate reliefs if so advised which the learned Judge can examine on its own merits after hearing the parties in accordance with law. Hence, I find no reason to interfere in the impugned order while exercising extraordinary jurisdiction under Article 227 of the Constitution of India. The petition stands rejected

F. M. REIS, J.