

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.46 of 2017**

1. Mr. Antonio Dias
aged about 82 years,
Son of late Mr. Avelino Dias
Married, retired, Resident
of H.No.697, Mott, Rivona,
Sanguem, Goa Through Power of
Attorney Shri M. V. Gabriel Rebello
Petitioner no.2.
2. Mr. Gabriel Rebello
63 years of age,
Son of Mr. Santiago Francisco
Rebello, Married, in service,
Resident of House No.314-A,
Pulamoll, Sao Jose De Areal,
Salcete-Goa .. Petitioners

Vs.

1. Mr. Nazario Noronha alias
Rosario Noronha
About 62 years of age,
s/o Mr. Filipe Noronha,
Major of age and his wife,
r/o Nispabhadd, Sao Jose De Areal,
Salcete, Goa.
2. Mr. Minguel Gomes
About 40 years of age,
s/o Mr. Pascoal Gomes
r/o Comba, Sao Jose Dea Areal,
Salcete, Goa
3. Mr. Camilo Soares
About 40 years of age,
Son of Mr. Rosario Soares
R/o Comba, Sao Jose Dea Areal,
Salcete, Goa
4. Mr. Joao Monteiro
About 55 years of age,
S/o Mr. Joaquim Monteiro
R/o Comba, Sao Jose De Areal,
Salcete, Goa

5. Mrs. Minguelina Monteiro
About 45 years of age,
Daughter of Mr. Naideade Monteiro
Unmarried, R/o Comba, Sao Jose
De Areal, Salcete, Goa
6. Mrs. Eugenia Monteiro
About 45 years of age,
Married, wife of Mrs. Francisco
Monteiro, R/o Comba,
Sao Jose De Areal, Salcete, Goa
7. Mrs. Luiza Travasso
About 40 years of age,
Married, wife of Mr. Piedade
Travasso, r/o Comba,
Sao Jose De Areal, Salcete, Goa
8. Mrs. Raina Tereza
About 45 years of age,
Daughter of Mr. Antonio Tereza,
Married, wife of Mr. Sebastiao Tereza
R/o Comba, Sao Jose De Areal
Salcete, Goa
9. Mr. Sebastiao Tereza,
About 55 years of age,
Son of Mr. Jose Tereza
R/o Comba, Sao Jose De Areal
Salcete, Goa
10. Mrs. Christalina Fernandes
About 35 years of age,
Married, wife of Mr. Marcal Fernandes,
R/o Comba, Sao Jose De Areal,
Salcete, Goa .. Respondents.

Mr. Sandesh Padiyar and Mr. P. Arolkar, Advocates for the petitioners.

Mr. Nigel D'Costa Frias, Advocate for the respondent nos. 2 to 5, 7 to 9.

CORAM :- C. V. BHADANG, J.

DATE:- 12th June, 2017

ORAL JUDGMENT :

Rule, made returnable forthwith. Shri Nigel D'Costa Frias, the learned Counsel waives service for the respondent nos.2 to 5, 7 to 9. Heard finally by consent of the parties.

2. The challenge in this petition is to the order dated 07/12/2016 (below Exh. 63) passed by the learned Civil Judge, Junior Division, Margao in Regular Civil Suit No.98/2013. By the impugned order, the application for amendment of the plaint and for addition of party, has been dismissed.

3. The brief facts are that the petitioners have filed the aforesaid suit for injunction against the respondents for restraining them from entering upon and interfering in part or portion of the suit property or from damaging any part or portion of the suit property, etc. The respondents filed Written Statement and raised a counterclaim, saying that the Comunidade of Curtorim, is the owner of the property. In the counterclaim, the respondents made the said Comunidade as party defendant. It may be mentioned that the Comunidade has filed a written statement asserting that it is the owner of the suit property.

4. In the meanwhile, there were inventory proceedings in

which according to the petitioners, the suit property was allotted to the share of Rodolina Dias, who is the daughter of petitioner no.1 and the wife of petitioner no.2. Thus, according to the petitioners, petitioner no.2 and his wife Rodolina have become joint owners of the suit property.

5. It may be mentioned that the respondents filed an application seeking impleadment of Rodolina as party defendant in the counterclaim, which has been allowed and Rodolina has been impleaded as one of the defendants in the counterclaim.

6. The petitioners filed an application (Exh.63) for amendment of the plaint and for impleadment of Rodolina as plaintiff no.3. It may be mentioned that the petitioners sought to introduce a claim that they are the owners and sought a declaration that they are in possession of the said property as owners. The learned Trial Court has dismissed this application by the impugned order, which is subject matter of challenge of this petition.

7. I have heard Shri Padiyar, the learned Counsel for the petitioners and Shri D'Costa, the learned Counsel for respondent nos.2 to 5 and 7 to 9. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned order passed.

8. At the outset, it may be mentioned that the learned Counsel for the respondent nos.2 to 5, 7 to 9, in all fairness, has no objection for allowing the impleadment of Rodolina as co-plaintiff, in as much as similar impleadment is allowed in the counterclaim. Even otherwise Rodolina having been arrayed as one of the defendants, in the counterclaim and further having regard to the fact that according to the petitioners, the suit property has been allotted to her, she would be necessary/ proper party to the suit. The learned Trial Court has refused to allow such impleadment on the ground that one of the co-owners can file a suit for injunction and all the owners are not necessary parties. It is worthwhile to note that apart from being a necessary party, the person can be allowed to be joined also as a proper party to the suit. Considering the overall circumstances and the concession on behalf of the respondents, in my considered view, the impleadment of Rodolina as co-plaintiff has to be allowed.

9. The only contention on behalf of the respondents is that the petitioners had previously filed Regular Civil Suit No.387/2000/I (Special Civil Suit No.2/1990 old), seeking declaration, injunction and consequential reliefs, against the Comunidade of Curtorim. That suit was partly decreed and it was held that the petitioners are in possession of the said

property. However, the relief of declaration was refused on the ground that the survey was in dispute and the DC case was pending before the concerned authority. It is undisputed that the said DC case is still pending before the Survey Authority. The Comunidade is also claiming that it is the owner of the said property by setting up rival title to property.

10. At this stage, the only question is whether amendment is to be allowed. The merits of the amendment cannot be gone into at this stage. In any event, the question of the ownership will arise and will have to be gone into in the suit, in as much as the Comunidade is seeking declaration of ownership. As noticed earlier, the suit has been dismissed on the ground that a DC case is pending. Be that as it may, subject to an appropriate issue about *res-judicata* being framed (if a defence in that regard is raised), I find that this part of the amendment also needs to be allowed.

11. In the result, the petition is allowed. The impugned order is hereby set aside. Application (Exh.63) is allowed. Amendment to be incorporated within three weeks from today. Rule is made absolute in the aforesaid terms, with no order as to costs.

12. It is made clear that the respondents as well as the

Comunidade will be entitled to raise appropriate defence as may be available in law.

C. V. BHADANG, J.

SMA