

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 353 OF 2017

SHRI. SADANAND DATTA GAUNS (DEC)
THR. HIS LRS. AND ANR.,

... Petitioners

Versus

SHRI. SUBHASH RAGHUVIR GAUNS.,

... Respondent

Mr. Ryan Da Piedade Menezes, Advocate for the petitioners.

Coram:- F. M. REIS, J.

Date:- 7th April, 2017

P.C.

Heard Mr. R. Menezes, learned counsel appearing for the petitioners.

2. The challenge in the above petition is to the refusal of leave to amend the plaint in the First Appeal.

3. Mr. R. Menezes, learned counsel appearing for the petitioners submits that the amendment is only clarificatory and as such according to him no prejudice would occasion to the respondent in case leave was granted. The learned counsel further pointed out that the petitioners being uneducated were not aware about the exigencies of incorporated the facts in the plaint which led to the delay in filing such application for leave to amend. It is further pointed out that the learned Judge has

erroneously rejected leave on the ground that due diligence has not been established by the petitioners in terms of the amendment to the Civil Procedure Code in the year 2002. The learned counsel thereafter has taken me through the impugned order as well as the proposed amendment to point out that the amendments are merely clarificatory and absolutely necessary to decide the matter in controversy.

4. I have considered the submissions of the learned counsel and I have also gone through the records. The suit filed by the petitioners apparently is for injunction simpliciter on the basis that the petitioners are agricultural tenants of the suit property. The proposed amendments are essential to contend that the respondent is interfering with the property belonging to the petitioners. Once the petitioners are in position to establish the claim of their tenancy, all other consequences in law would follow. In such circumstances, the proposed amendments prima facie are not necessary to decide the matter in controversy. As such, I find that there is no jurisdictional error committed by the learned Judge while passing the impugned order and refusing leave to amend the pleadings which would call for interference in the present Writ Petition under Article 227 of the Constitution of India.

5. Be that as it may, liberty to the petitioners to challenge the

impugned order in case any adverse order is passed against the petitioners at the time of the final disposal of the appeal on merits.

6. Subject to the above, the petition stands rejected.

F. M. REIS, J.

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