

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 301 OF 2017

MR. EMIDIO FRANCISCO MONTEIRO AND
ANR.,

... Petitioners

Versus

MR. SURESH ATMARAM NAIK AND 12
ORS.,

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioners.
Mr. M. B. D'Costa, Senior Advocate with Ms. K. Betquecar,
Advocate for the respondent nos.1 and 2.

Coram:- C. V. BHADANG, J.

Date:- 17th July, 2017

P.C.

Heard the learned Counsel for the parties.

2. The petitioner is challenging the order dated 12/01/2017, passed by the learned Trial Court, by which an application (Exhibit D-34), filed by the respondent nos.1 and 2/ original plaintiffs under Order I, Rule 8 of CPC, read with Order VI, Rule 17 of CPC, has been allowed.

3. This Court, by an order dated 26/04/2017, had directed the petitioners to place on record the list, showing the names and addresses of the parties, to whom they have sold the portions of the suit property. It was stipulated that once such list is filed, this Court can consider whether leave shall be granted to the respondent nos.1 and 2 to implead said persons as defendants in

the suit instead of insisting for the petitioners being sued in a representative capacity.

4. On the last date, the petitioners have produced the list (marked 'X' for identification), showing the names and addresses of in all 43 persons, to whom the portions of the suit property, have been sold.

5. Mr. D'Costa, the learned Senior Counsel for the respondent nos.1 and 2 had sought time to take instructions and make appropriate statement.

6. Today, it is submitted that the addresses of these 43 persons are fake and incorrect and the respondent nos.1 and 2 will find it difficult to serve them by the regular process. It is submitted that this Court may direct service of these persons by publication.

7. I have considered the circumstances and the submissions made and I find that the submission on behalf of the respondent nos.1 and 2 cannot be accepted. This is because, these 43 persons are not yet made party defendants in the suit. Secondly, there is nothing on record to suggest that the addresses, as mentioned in the list, are incorrect. The Civil Procedure Code envisages that an attempt has to be made initially for service of the summons on the person by regular process and only in the

event, where the concerned party is intentionally avoiding service that an alternate mode of service can be resorted to. It would be, thus, necessary for the petitioners in the first instance, to array these purchasers as party defendants and then obtain appropriate orders from the Trial Court for service. Needless to mention that in the event the Trial Court finds from the service report that the addresses are incorrect and/ or these purchasers, who are added as party defendants, are intentionally avoiding service, the Trial Court can then pass appropriate orders for substituted service, in accordance with law.

8. In the result, the petition is allowed. The impugned order is set aside. Liberty is granted to the respondent nos.1 and 2 to file an application for impleadment. If such an application is filed, the Trial Court shall permit such impleadment. Liberty is also granted to the respondent nos.1 and 2 to file an application for substituted service in the event, the addresses, as mentioned, are found to be not correct. If such an application is filed, the Trial Court shall pass appropriate orders on the same, in accordance with law. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

SMA