

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**FIRST APPEAL NO. 23 OF 2016**

Floriano Barreto ... Appellant

Versus

Mr. Silvester Manuel Miranda & 13 Ors., ... Respondents

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Shri J.R. Serra with Mr. L. Salkar, Advocates for the Appellant.

Shri Ryan Menezes, Advocate for the Respondent No. 1.

Ms. Prachi Kabadi, Advocate for the Respondent Nos. 3, 4 and 5.

**CORAM:- C.V. BHADANG, J.**

**DATE:- 27<sup>th</sup> SEPTEMBER, 2017.**

**ORAL ORDER:**

On 14.07.2016, while issuing a notice, it was stipulated that the Appeal could be disposed of finally at the stage of admission. Accordingly, I have heard Shri Serra, the learned Counsel for the appellant, Shri Menezes, the learned Counsel for the respondent no. 1 and Ms. Kabadi, the learned Counsel for the respondent nos. 3, 4 and 5. The other respondents are not present, though served. Looking to the short question involved, the same is being disposed of finally.

2. The petitioner filed a suit *inter alia* for a declaration that the judgment and order passed by the learned Mamlatdar of

Salcete in Tenancy Case No. MAM/TNC/1/2007 and Purchase Case No. MAM/TNC/PUR/BET/1/2009, is null and void and non est in the eyes of law. The petitioner is also seeking some consequential reliefs for correction of the revenue record and the mutation entries. In the plaint, the petitioner claims that his name is Floriano Barreto alias Floriano Rebello.

3. The respondent nos. 1 and 2 filed a written statement and resisted the suit.

4. On the basis of the rival pleadings, the learned Trial Court framed the following issues:-

1. Whether the plaintiff proves that he is known either as Floriano Baretto or Floriano Rebello ?
2. Whether the plaintiff proves that he is a tenant of the property bearing survey no.36/26 of village Betalbatim ?
3. Whether the plaintiff proves that the Consent Decree in Regular Civil Suit No.189/2011/A is null and void ?
4. Whether defendants 1 and 2 prove that the Divergence Certificate of the plaintiff has been cancelled ?

5. It is at this stage that the respondent no. 1 (defendant no. 1) filed an application for rejection of the plaint under Order

VII, Rule 11 of CPC. It was contended that the petitioner has not spelt out, as to on what basis, he is claiming to be Floriano Rebello. It was further contended that the petitioner has filed a false and frivolous suit. It was also contended that the Village Panchayat has cancelled the Divergence Certificate on the ground that the petitioner was misusing it in various Government offices. A contention was also raised about the suit being barred by limitation. However, the impugned order shows that the suit was rejected under Order VII, Rule 11(a) of CPC. As such, the consideration will have to be confined to the question whether, the plaint can be rejected on the ground that it does not disclose a cause of action.

6. It is submitted by the learned Counsel for the petitioner that the plaint can be rejected only on the basis of the statements contained in the plaint and not otherwise. It is contended that the defence raised by the defendants can neither be considered nor is relevant, while deciding the question of rejection of the plaint. It is submitted that once the issue was framed on the question whether, the petitioner is also known as Floriano Rebello, an inquiry was necessary and the plaint could not have been rejected on the ground that it does not disclose a cause of action.

7. The learned Counsel for the respondent no. 1 has supported the impugned order. It is submitted that the petitioner has not shown that he is also known as Floriano Rebello. It is submitted that the petitioner is impersonating by assuming different names such as Floriano Rebello, Floriano Pereira and Floriano Barreto.

8. I have carefully considered the rival circumstances and the submissions made. Under Order VII, Rule 11 of CPC, the plaint can be rejected, if it does not disclose a cause of action. It is now well settled that while considering the question of rejection of plaint, the Court has to confine itself to the averments in the plaint and the documents filed alongwith it by the plaintiff. The defence raised has no relevance at this stage. The petitioner in para 1 of the plaint has averred that he is known as Floriano Barreto or Floriano Rebello and to that effect has obtained a Divergence Certificate from the Village Panchayat of Nuvem. As noticed earlier, there is a specific issue framed by the learned Trial Court being issue no. 1 namely, whether the plaintiff proves that he is known either as Floriano Barreto or Floriano Rebello. It is thus apparent that the said question being a disputed question of fact, has to be gone into at the trial of the

suit. In other words going by the contents of the plaint, it cannot be said that the same is liable to be rejected, on the ground that it does not disclose a cause of action.

9. The reasoning of the learned Trial Court, while rejecting the plaint can be mainly found in para 16 of the impugned order in which the learned Trial Court has observed that in the view of the fact that the plaintiff has failed to show that his surname is also Rebello, it can safely be said that the plaint does not disclose a clear right to sue as the person who is stated to be the tenant of the suit property is one Floriano Rebello and not Floriano Barreto. Such a reasoning in my considered view, cannot be countenanced while rejecting the plaint. It would be appropriate that the Court considers the question of trying the issue no. 1 as a preliminary issue, if so requested by the parties.

10. In such circumstances, the First Appeal is allowed. The impugned order is hereby set aside. Civil Suit No. 43/2014 is restored back to the file of the learned District Judge at Margao, for disposal in accordance with law, in the light of the observations made above. The parties to appear before the learned Trial Court on 30.10.2017 at 10:00 a.m.

In the circumstances, there shall be no order as to costs.

**C.V. BHADANG, J.**

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