

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 649 OF 2017**

Shri Pandurang Krishna Gaudo, of major age, Indian National, resident of Ambeshiwada, Pale, Bicholim Taluka, Goa. (since deceased through his legal heirs):

- 1(a) Bhagirathi Pandurang Gaudo alias Mulgaonkar (wife of late Pandurang Gaudo alias Mulgaonkar);
- 1(b) Rama Pandurang Gaudo alias Mulgaonkar;
- 1(c) Sita Gaudo alias Mulgaonkar;
- 1(d) Krishna Pandurang Gaudo alias Mulgaonkar;
- 1(e) Radhika Krishna Gaudo alias Mulgaonkar;
- 1(f) Shivdas Pandurang Gaudo alias Mulgaonkar;
- 1(g) Lalita Shivdas Gaudo alias Mulgaonkar;
- 1(h) Khushali Pandurang Gaudo alias Mulgaonkar;
- 1(i) Navita Khushali Gaudo alias Mulgaonkar;
- 1(j) Laxman Pandurang Gaudo alias Mulgaonkar;
- 1(k) Leena Laxman Gaudo alias Mulgaonkar;
- 1(l) Santosh Pandurang Gaudo alias Mulgaonkar;
- 1(m) Maya Santosh Gaudo alias Mulgaonkar;

All residents of House No. 88, Ambexi, Pale-Goa.

.... Petitioners

Versus

M/S Madachem Bat Mines Pvt. Ltd., a Company incorporated under the Companies Act, 1956, having its Registered office at Vasco-da-Gama (Goa), represented by its Power of Attorney Holder Shri Rajaram Shivram Sawant, of major age, Indian National, residing at Suvarna Bandekar Building, Post Box No. 11, Swatantra Path Road, Vasco-da-Gama, (GOA).

.... Respondent

Shri Prasheen Lotlikar, Advocate for the Petitioners.

Shri E. Dias, Advocate for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 13th SEPTEMBER, 2017.

ORAL JUDGMENT:

Rule made returnable forthwith. The learned Counsel for the respondent, waives service. Heard finally by consent of parties.

2. The respondent has filed a suit, against now deceased, Pandurang Gaudo, who is the predecessor of the petitioners. The suit is filed for perpetual injunction, restraining the petitioners from interfering with the possession of the respondent over the suit property, which is bearing Survey No. 96/1 of Village Pale of Bicholim Taluka of North Goa District.

3. The respondent filed an application for amendment of the plaint seeking addition of paragraphs 1(a), 3(a), 3(b), 3(c), 4(a) and 4 (b) as under:-

“1(a) The Applicant states that the suit property is surveyed under Survey No. 96/1 of Village Pale in Bicholim Taluka and was originally belonging to Late Shri Laxmikant Shantaram Surlekar and his wife alongwith another property surveyed under Survey No. 76/3 of the same village and both the properties were sold by said Late Shri Laxmikant Shantaram Surlekar and his wife to Mrs. Subhadra Ladu Gawas.

3(a) It is stated that the Respondent herein was claiming to be an Agricultural tenant of the original owner Late Shri Laxmikant Shantaram Surlekar in respect of both the properties as his name was figuring in the tenants column in respect of both the said properties, when factually he had no rights whatsoever.

3(b) It is stated that the suit property was purchased by the applicant from the said Mrs. Subhadra Ladu Gawas.

3(c) The Applicant states that the claim of the Respondent herein was joint claim of both properties against the original owner Late Shri Laxmikant Shantaram Surlekar and the said claim is bogus and is a sham without any justification and he never had any rights or interest in these properties and as such he has not pursued his claim in respect of Survey No. 76/3. The claim of P.K. Gawde in respect of suit property is also bogus and is sham, without any rights which was originally belonging to the same owner.

4(a) Notice was issued in respect of both the properties for purchase under Section 18(c) of the Agriculture Tenancy Act. The Applicants herein were not served with the said notice which facts have already been set out. As far as Survey No. 76/3 is concerned a notice was issued to the present owner i.e. Mrs. Subhadra Ladu Gawas was served in respect of the Survey No. 76/3 and upon receipt of the said notice the same was resisted by him and the claim of the Respondent herein of Tenancy as against Survey No. 76/3 was rejected and further even his name in the tenant's column was deleted and it stands deleted.

4(b) The Applicant crave leave to refer and rely on the old survey records and present survey records in respect of 76/3, besides records and proceedings in respect of Survey No. 76/3, u/s 18(c) and orders passed thereon."

4. It was contended that the land Survey No. 96/1 (which is subject matter of the suit), as well as another land Survey No. 76/3 (which is not the subject matter of the suit), were originally belonging to late Laximan Shantaram Surlekar and his wife. Laximan Surlekar and his wife sold the aforesaid properties to Mrs. Subhadra Ladu Gawas. Land Survey No. 96/1 has been purchased by the respondent from Mrs. Subhadra Gawas. According to the respondent, now deceased, Pandurang Gauda

was claiming to be agricultural tenant in respect of both the properties, namely, Survey No. 96/1 and Survey No. 76/3. It was contended that there was a notice issued in respect of both the properties for purchase of the land under Section 18C of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act, for short) and by an order dated 02.07.1992, the name of now deceased, Pandurang Gaudo was deleted as tenant in respect of the land Survey No. 76/3. In short, by the proposed amendment, the respondent wants to bring on record, the fact that the name of now deceased, Pandurang Gaudo was deleted as tenant from the property bearing Survey No. 76/3.

5. The application for amendment was opposed by the petitioner *inter alia* on the ground that the land Survey No. 76/3 is not the subject matter of dispute and as such, the alleged deletion of the name of Pandurang Gaudo from the land Survey No. 76/3 is not relevant for deciding the controversy in the suit.

6. The learned Trial Court by the impugned order has found that the amendment can be allowed at any stage of the proceedings, as the proposed amendment is based on the subsequent event, which has occurred after the filing of the suit.

7. I have heard Shri Lotlikar, the learned Counsel for the petitioner and Shri Dias, the learned Counsel for the respondent and perused record.

8. The learned Counsel for the petitioner has contented that now deceased, Pandurang Gaudo and for the matter of that, the legal representatives of the petitioner are not claiming any tenancy rights in respect of the land Survey No. 76/3. It is contended that the petitioner has no concern with the said land and the suit is only in respect of the land Survey No. 96/1 and as such, the amendment which has been allowed, is not relevant.

9. The only contention raised on behalf of the respondent is that now deceased, Pandurang Gaudo was claiming to be a tenant in respect of both the properties, namely, Survey No. 96/1 and Survey No. 76/3, which were owned by Laximan Surlekar and his wife. It is thus submitted that the fact that the claim of Pandurang Gaudo in respect of land Survey No. 76/3 has been negatived, would be relevant to decide the claim of the petitioners about their tenancy rights in respect of land Survey No. 96/1. The learned Counsel for the respondent has placed reliance on the decision of the Supreme Court in the case of **Haridas Aildas Thadani & others Vs. Godrej Rustom**

Kermani, 1984 1 SCC 668 and in the case of **Prem Bakshi & Others Vs. Dharam Dev & Others, (2002) 2 SCC 2.**

10. At the outset, it is necessary to note that the subject matter of dispute in the suit is only land Survey No. 96/1, which is distinct than land Survey No. 76/3. It is the specific case of the petitioners that they have no concern with the land Survey No. 76/3 and the petitioners and their predecessor, Pandurang Gaudo were not claiming any tenancy rights in respect of the land Survey No. 76/3. If that be so, the proposed amendment, which seeks to bring on record the fact that the name of Pandurang Gaudo was deleted, from the name of the tenants, from land Survey No. 76/3, cannot be said to be necessary for the just decision of the case. The learned Trial Court is also not correct in observing that the amendment is based on the subsequent event. This is because the order of deletion of name of Pandurang Gaudo is passed in 1992, while the suit is filed in the year 1993. There cannot be any manner of dispute with the proposition that the amendment can be allowed at any stage of the proceedings, provided that the amendment is necessary for deciding the real controversy in the suit. The test for allowing any amendment is whether, the proposed amendment is necessary for deciding the real controversy in the suit. As

noticed earlier, the land Survey No. 76/3, is not the subject matter of dispute in the suit. That apart, the respondent has filed an independent application for negative declaration against the petitioners in respect of land Survey No. 96/1, which is pending before the Mamlatdar. In such circumstances, it cannot be said that the proposed amendment is necessary for deciding the real controversy in the suit.

11. It is true that a Writ Court would normally be slow in interfering with the order of the learned Trial Court, allowing the amendment. However, when the amendment is found to be absolutely not relevant for deciding the real controversy in the suit, the Writ Court would be justified in interfering with the same. The decision in the case of **Prem Bakshi** (supra) and in the case of **Haridas Aildas Thadani** (supra) turned on their own facts and are clearly distinguishable.

12. In such circumstances, the petition is allowed. The impugned order is hereby set aside. The application for amendment is hereby dismissed. Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.

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