

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 658 OF 2017****SHRI. BABU YESSO NAIK (DEC) THR
LRS AND ANR.,****... Petitioners****Versus****SHRI. MARUTI GANGAPPA HALLIKAR AND
ANR.,****... Respondents**

Mr. Jagannath Jayant Mulgaonkar, Advocate for the Petitioners.

Mr. Ashwin D. Bhobe, Advocate for Respondent no.1 & 2.

Coram:- C. V. BHADANG, J.**Date:- 4th September 2017.****Oral Order:**

The petition challenges the order dated 27/6/2017 dismissing the application (Exhibit D-50) filed by the petitioner for amendment of the written statement. Indisputably the suit was initially dismissed and in appeal, the learned District Judge has remanded the matter to the trial court with permission to the petitioner/defendants to amend the written statement. After the matter went back, the original defendant no.1 died. After the death of the defendant no.1 on 30/11/2015 the Village Panchayat of Bastora has executed a deed of lease dated 13/4/2017 leasing out a portion admeasuring 302 sq.mts of the said property in favour of the legal heirs of the defendant no.1. In such circumstances the petitioner wanted to incorporate an amendment by addition of para 6(B) to the written statement as under:

"6B-Subsequent to the demise of the Defendant no.1 on 30/11/2015 the Village Panchayat of Bastora by a duly registered Deed of Lease dated 13/4/2017 has leased the same portion admeasuring 302 square meters of the said property to his legal heirs of the defendant Defendant no.1 for a period of 4 years and 11 months. The leased portion shown in the plan annexed to the said Lease Deed also includes a portion of the plot bearing Survey no.21/1/D claimed by the Plaintiffs. A notarized copy of the said Deed of Lease dated 13/4/2017 is produced herewith on record."

2. The learned counsel for the respondent states that there was a suit challenging the legality and validity of the earlier lease deed dated 1/4/2006 in favour of the original defendant no.1 and which suit has been decreed declaring the said lease deed as null and void to the extent of the area claimed by the plaintiffs. Indisputably the said decree is subject matter of challenge at the instance of the petitioner before the learned District Judge. The record discloses that this ground was not raised before the trial court. It would thus be appropriate that the application for amendment is sent back to the trial court permitting the parties to raise all the available contentions including the effect of the declaration of the earlier lease deed as null and void. The trial court shall then decide the application after hearing the parties in accordance with law. In such circumstances the petition is partly allowed. The impugned order is hereby set aside. The application (Exhibit D-50) is sent back to the trial court for deciding it afresh in accordance with law. The respondent nos.1 and 2 are permitted to file an additional reply to the application for

amendment within two weeks from today. The trial court shall decide the application afresh after hearing the parties and in accordance with law. Rival contentions of the parties are left open.

C. V. BHADANG, J.

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