

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 761 OF 2016

SMT. GOCULEM MOLICO @ CAXI @
CAXIBAI POLINA @ POL @ SUTABAI @
SAVITRI ROULO POL (DEC) AND 12 ORS. Petitioners

Versus

SHRI. RAMCHANDRA MADEVA PAL AND 12
ORS. Respondents

Mr. Ashwin Bhobe, Advocate for the Petitioners.

Mr. R.G. Ramani, Advocate for Respondent Nos. 1 and 2.

CORAM:- C. V. BHADANG, J.

DATE:- 8th FEBRUARY, 2017

ORAL ORDER:

The petitioners are challenging the order dated 06.06.2016, passed by the learned Trial Court, by which an application (Exhibit D-43), for amendment of the written statement, filed by respondent nos.1 and 2 (original defendant nos.1 and 2), has been allowed.

2. A perusal of the petition and the submissions made on behalf of the petitioners would show that the challenge is only

restricted to the substitution of para 15 of the written statement.

Para 15 of the written statement, is in reply to para 8 of the plaint.

Para 8 of the plaint reads thus:

"8. The plaintiffs state that the said Madeu alias Madeva Roulu Pol was married to Parvoti Madeu alias Madeva Roulu Pol alias Polina and the said Parvoti Madeva Polina was also known by other name Vassanti Pol.

The plaintiffs further state that the said Madeu alias Madeva Roulu Pol and Parvoti Madeu alias Madeva Pol alias Polina were also having one son by name Roulu Madeva Pol who was born in the year 1907 and accordingly his birth was registered in the office of the Civil Registrar of Bicholim."

3. The original para 15 of the written statement (prior to amendment) reads thus:

"15. The contents of para no. 8 of the plaint are not denied, however, the year of birth of Raulu Mahadev Pal is not admitted for want of verification of the records and the plaintiffs are put to the strict proof thereof."

4. Respondent nos. 1 and 2 had proposed to substitute para 15 as under:

"15. The contents of the para no. 8 of the plaint that Mahadev Raulu Pal had one son by name Raulu Mahadev Pal is not denied and rest of the contents are denied for being false and the plaintiffs are put to the strict proof thereof."

5. The learned Trial Court in para 14 of the impugned order has found that the proposed amendment withdrew the admission to the extent of denial of the marriage between Madeva Roulu Pol and Parvoti Madeva Pol, however, has then found that it is not a withdrawal of a vital admission. It is in these circumstances, that the amendment has been allowed.

6. The learned Counsel for the petitioners has pointed out the lineage in which, Madeva Roulu Pol is said to be married to Parvoti Madeva Pol, who had the only son, Roulu. The suit challenges the Deed of Adoption dated 08.01.1955, by which, defendant no.1 is said to be adopted by Madeva Pol. It is undisputed that Parvoti wife of Madeva died in the year 1950 i.e. much prior to the Deed of Adoption.

7. It is trite that the amendment to the written statement can be more liberally considered and granted, than an amendment to the plaint. In the present case, the amendment is at the stage where trial has not commenced, as such, rigour of proviso to Order VI, Rule 17 of CPC, does not apply. In my considered view, the learned Counsel for the respondent nos. 1 and 2 is justified in saying that once the wife of Madeva Pol has been shown to be dead much prior to adoption, even the question of her consent to adoption, may not arise and that the proposed amendment does not seek to take away the admission on a vital aspect.

8. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity, so as to require interference under the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

The petition is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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