

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.136 of 2016**

1. Mr. Agostinho Pires
Son of late Antonio Pires,
Major in age, Business,

2. Mrs. Celina Pires,
W/o Mr. Agostinho Pires,
Major in age, Service,

Both residents of H. No.1148,
Opp. Cada hall, Carriamoddi,
Pontemol, Curchorem-Goa.

.. Petitioners

Vs.

1. Smt. Olivia D'Souza
D/o late Antonio Pires,
Major in age, housewife,
and her Husband,

2. Shri Luis D'Souza,
S/o Francis D'Souza,
Major in age, Advocate,
Both R/o H.No.01,
Curca, Near Bridge, P.O.
Old Goa Vella,

3. Mrs. Effie D'Souza,
D/o late Antonio Pires,
Major in age, Housewife,
and her Husband,

4. Mr. Santiago D'Souza
Major in age, service,
Both R/o Near Shivaji Chowk,
Savordem, Churchorem-Goa
(Deceased)

4a. Mr. Fraizer D'Souza
Son of late Mr. Santiago D'Souza
30 years of age, Service
R/o Near Shivaji Chouk,
Sanvordem, Churchorem, Goa.

4b. Mrs. Aloma A. D'Souza
Wife of Mr. Fraizer D'Souza

Major in age, Housewife,
R/o. Near Shivaji Chowk,
Sanvordem, Churchorem, Goa,

- 4c. Miss Joyner D'Souza,
Daughter of late Mr. Santiago D'Souza
27 years of age, Service.
- 4d. Miss Sanfie D'Souza,
Daughter of late Mr. Santiago D'Souza
26 years of age, service,
- 4e. Mr. Samuel D'Souza,
Son of late Mr. Santiago D'Souza,
24 years of age, Service.

All resident of Near Shivaji Chowk,
Sanvordem, Churchorem, Goa.

- 5. Mrs. Dorothy D'Mello
D/o late Antonio Pires,
Major in age, housewife,
R/o H.No.01, Neura, Guddiwada,
Tiswadi-Goa.

Respondent nos.6 to 35 are deleted
as per Order dated 18/02/2016. .. Respondents

Mr. S. Mahambrey, Advocate for the petitioners.

Mr. G. Agni, Advocate for the respondents.

CORAM :- C. V. BHADANG, J.

DATE:- 6th February, 2017

ORAL JUDGMENT :

On 04/02/2016, a notice for final disposal was issued in this case. Accordingly, the petition is being disposed of finally.

- 2. The petitioners, who are original defendant nos.1 and 2 before the Trial Court, are challenging the order dated

30/11/2015, by which a part of the amendment to the written Statement, has been refused.

3. The brief facts are that the petitioners filed an application for amendment of the Written Statement, seeking to amend paras 17, 18, 19, 20, 24 and 26. By the impugned order, the Trial Court has partly allowed the application, permitting addition of paras 18B and 24B. The rest of the amendment has been refused.

4. A perusal of the impugned order would show that according to the Trial Court, the proposed amendment, seeking to introduce paras 18B and 24B, which has been allowed, is clarificatory in nature and is in consonance with the earlier pleading. The Trial Court has also noticed that the amendment to the Written Statement should be construed liberally, however, has found that an admission, which is in favour of the plaintiff, cannot be allowed to be withdrawn or negated by the amendment. Thus, in short, the rest of the amendment, which is refused, is on the ground that it seeks to take away an admission, which, in my considered view, cannot be accepted. It would be worthwhile to reproduce the amendments, which have been refused.

(i) Amendment to para 17 -

Add "the contents of para 13 are denied for want of

knowledge and the plaintiffs to be put to the strict proof of the same.

(ii) Amendment to para 18-

Replace para 18 by 18A "With reference to para 14 the contents are denied to the fact that plaintiff nos.1, 3 and 5 along with Mrs. Angela Pereira and Pricillia Fernandes as his daughter and plaintiff nos.2 and 4 have jointly inherited the rights in the suit plot including suit structures.

(iii) Amendment to para 19 -

Remove the words "parental house" and replace it by "House where defendant no.3 now resides" at line 18."

(iv) Amendment to para 20 -

After "Rs.5,000/- towards the same" add "The said amount of Rs.5,000/- was in fact given by defendant no.1 to his father."

(v) Amendment to para 24 -

Delete the portion after "constructing anything in their plot" and add para 24A "The contents of para 20 are denied for want of knowledge and the plaintiff to be put to the strict proof of the same."

(vi) Amendment to para 26-

Remove the words "parental house" and replace it by "House where Defendant no.3 now resides" at line 14 and 16.

5. It can, thus, be seen that the proposed removal of the words "parental house" and its replacement by words "house where defendant no.3 now resides", is considered as a withdrawal of an admission. The learned Counsel for the petitioners points

out that the words “parental house” were used as that was how the house was described in the plaint. It is submitted that the overall reading of the Written Statement does not show that there was any admission by use of the words “parental house”.

6. The learned Counsel for the respondents/ plaintiffs disputes this.

7. On a careful perusal of the Written Statement, it can be seen that the mere use of the “parental house” cannot be seen as an admission. The amendment is admittedly at a stage where the trial has not commenced. As rightly noticed by the Trial Court, the amendments to the Written Statement can be more liberally considered than amendment to the Plaint. Considering the overall circumstances, I find that the application for amendment could be granted in its entirety.

8. In the result, the impugned order, to the extent it rejects the application for amendment, is hereby set aside. The application Exh.34 stands allowed as prayed. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

SMA