

**IN THE HIGH COURT OF BOMBAY AT GOA**

WRIT PETITION NO. 1123 OF 2017

MONO B. NAIK DESSAI (DEC) THR. HIS  
LRS. AND 3 ORS.,

... Petitioners

Versus

COMMUNIDADE OF QUITTAL, REP. BY  
ITS ATTORNEY, SADANAND M. NAIK  
DESSAI AND 8 ORS.,

... Respondents

Mr. Almeida Coutinho Cleofato Garrett, Advocate for the  
petitioners.

Coram:- C. V. BHADANG, J.

Date:- 18th December 2017

P.C.

Heard Shri Coutinho, the learned Counsel for the petitioners.

2. The challenge in this petition is to the order dated 13/11/2017 passed by the learned Trial Court allowing the application for addition of parties/ intervention. The petitioners are the original defendant nos.1 to 4 in a suit filed by the first respondent. The respondent nos.8 and 9 filed an application before the learned Trial Court purportedly under Order I, Rule 10 of CPC for their addition as party defendants. Indisputably, the petitioners are claiming right to the disputed property through their ancestor Zorgo Bhicaro Naik Dessai. The intervenors also claim that they are successors of Zorgo Naik Dessai and in that view of the

matter, sought their addition. The learned Trial Court found that although the death and birth certificates produced do not show the heirship of the intervenors with Zorgo Naik Dessai, however, this issue is required to be decided on merits at the trial and in that view of the matter, the Trial Court has allowed the application.

3. It is submitted by Shri Coutinho, the learned Counsel for the petitioners that once the Trial Court found that on the basis of the death and birth certificates, the intervenors have not established heirship or any relation with Zorgo Naik Dessai, it ought to have dismissed the application. It is submitted that the petitioners cannot be compelled to contest the issue of the succession of Zorgo Naik Dessai at the instance of the intervenors.

4. I have considered the circumstances and the submissions made and I do not find that any case for interference is made out.

5. At the outset, it is necessary to note that principally, it is the plaintiff, who is dominus litis and ought to decide the parties, who are required to be added in the suit. This is subject to the overriding power of the Court under Order I, Rule 10(2) of CPC, where the Court can add parties, if they are found to be necessary and proper parties. Thus, normally, the co-defendants may not have any say as to who should be the parties to the suit. For this

reason alone, the challenge at the instance of the co-defendants to the addition of the respondent nos.8 and 9 as defendants may not be entertained. That apart, the petitioners as well as the respondent nos.8 and 9 are allegedly claiming rights to the property through Zorgo Naik Dessai and although at this stage the Trial Court has found that the documents do not show that the intervenors are the successors of Zorgo Naik Dessai, they will have to be offered an opportunity to establish their claim. This can only be done at the trial. I do not find that the impugned order suffers from any infirmity and/or causes any manifest injustice to the petitioners. The petitioners shall not in any manner be prejudiced in establishing their defence and claim. In that view of the matter, I decline to entertain the petition, which is accordingly dismissed.

C. V. BHADANG, J.

SMA