

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 716 OF 2018**

VEDANTA LTD. FORMERLY KNOWN AS
SESA GOA PVT. LTD., THR. MANAGING
DIRECTOR AND ANR.,

... PETITIONERS

Versus

COMUNIDADE OF AMONA, THR. ITS
SPECIAL ATTORNEY, RAGHUVIR SURYA
SINARI AND 3 ORS.,

... RESPONDENTS

Shri R.G. Ramani, Advocate for the Petitioner.

Shri Raunaq Rao, Advocate for the Respondent No. 1.

CORAM : C.V. BHADANG, J.

Date : 13th December, 2018

ORAL ORDER:

The petitioners are the original defendant nos. 4 and 5 in a suit filed by the respondent no. 1. The petitioners by this petition are impugning the order dated 10.11.2017, passed by the learned Trial Court, permitting the amendment of the plaint in order to incorporate the challenge to the alleged final possession, granted to the petitioner no. 1 on 04.10.1996, on the ground that the same is granted in breach of the provisions of Articles 317 to 346 of the Code of Comunidade. Undisputedly, the trial has not commenced in the suit and even, issues are yet to be framed.

2. The respondent no. 1 filed the suit claiming that the petitioner no. 1 has committed breach of the conditions of the lease granted and as such, has sought recovery of possession. In the written statement, the petitioner no. 1 claims that what is granted to the petitioner no. 1 is an Aforamento, in which, provisional possession was given to the petitioner no. 1 in 1992 and the final possession is given in 1996.

3. The respondent no. 1 filed an application for amendment, claiming that for the first time on 28.10.2015, the respondent no. 1 became aware of the claim of the petitioner no. 1 of there being an Aforamento in his favour and grant of final possession in 1996. By the proposed amendment, the respondent no. 1 seeks to challenge the grant of final possession.

4. The learned Trial Court came to the conclusion that the proposed amendment does not change the nature or the character of the suit and no prejudice will be caused to the petitioner no. 1 as the petitioner no. 1 will get an opportunity to file additional written statement. The learned Trial Court has further noticed that the merits of the proposed amendment cannot be taken into consideration at this stage. In that view, by the impugned order dated 10.11.2017, the application came to

be granted. Hence, this petition.

5. I have heard Shri Ramani, the learned Counsel for the petitioners and Shri Rao, the learned Counsel for the respondent no. 1. With the assistance of the learned Counsel for the parties, I have gone through the record.

6. It is submitted by Shri Ramani, the learned Counsel for the petitioners that the application lacks bonafide, in as much as the respondent no. 1 was aware of the claim made by the petitioner no. 1 of the land being granted by way of Aforamento. It is submitted that two notices were issued to the petitioner no. 1 somewhere in 2005, which are subject matter of challenge before the Administrator of Comunidades, in which, leave and license executed by/and between the petitioner nos. 1 and 2 on 11.08.2005 is produced on record. The learned Counsel pointed out that the said agreement contains a clear recital of the final possession of Aforamento, granted to the petitioner no. 1 on 04.10.1996, after complying with the necessary formalities. It is thus submitted that it is not possible to accept that the respondent no. 1 became aware of the claim of the petitioner no. 1 for the first time when the written statement was filed. Even otherwise, the first respondent ought to be aware of the grant of

provisional and final possession, which was granted after the documents were duly executed. Secondly, it is submitted that the claim in the proposed amendment would be barred by limitation. Reliance is placed on the decision of the Supreme Court in the case of **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons & Others, (2009) 10 SCC 84**, in order to submit that where the proposed amendment is not bonafide, the same cannot be allowed.

7. Shri Rao, the learned Counsel for the respondent no. 1 has supported the impugned order. It is submitted that at this stage, there is nothing to show that the respondent no. 1 was aware of the contents of the leave and licence agreement executed between the petitioner nos. 1 and 2. It is submitted that the respondent no. 1 for the first time became aware of the alleged Aforamento granted and also of final possession in 1996, when the written statement was filed. It is submitted that no prejudice would cause to the petitioners, as the petitioners would be entitled to file additional written statement.

8. I have carefully considered the rival circumstances and the submissions made. Admittedly, the trial is yet to commence and issues are not yet framed. Thus, the rigour of

proviso to Order VI, Rule 17 of CPC, is not attracted in this case. It is not necessary at this stage to go into the merits of the amendment, as rightly found by the learned Trial Court. It is significant to note that the petitioners have already raised a defence that the suit as framed and filed in the year 2014 and the claim made therein is barred by limitation. Even insofar as the proposed amendment, which is allowed, is concerned, the issue of limitation would be open and the learned Trial Court will have to decide whether, the claim as sought to be introduced, is barred by limitation or not, on the ground that the respondent no. 1 was already aware of the grant of Aforamento and of the final possession in the year 1996. Thus, keeping the issue of limitation open, which can be gone into at the trial, I do not find that any case for interference is made out. Subject to this, the Writ Petition is disposed of, with no order as to costs.

C.V. BHADANG, J.

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