

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 510 OF 2018**

Mr. Antonio Filomena Agnelo Stuart Gonslaves Dias,
S/O late Mr. Fumazoni Dias,
aged 60 years, service,
r/o H. No.223, Arrossim,
Cansaulim, Mormugao, Goa.

.... Petitioner

V e r s u s

1. Mr. Pascoal Frank Juliano Antao,
Alias Pascoal Antao,
aged 53 years, s/o late Pedro Alcantara Antao,
Service, r/o Flat No.2, Diamond Apartments,
Damodar Nagar, Fatorda,
Margao, Salcete, Goa and others.

..... Respondents.

Coram:- C. V. BHADANG, J.

Date:- 9th July 2018.

Mr. J. Abreu Lobo, Advocate for the Petitioner.

Mr. S. Usgaonkar, Senior Advocate with Adv. Palyekar Vinita Vishram for
Respondent No.1.

Oral Order:

The petitioner, who is the original defendant no.3 is challenging the order dated 9/2/2018 below Exhibit 8 passed by the learned trial court, by which an application filed by the respondent no.1 purportedly under Order VI Rule 17 of C.P.C. for amendment of the cause title of the suit by correction of the

name of the original defendant no.2 has been allowed.

2. I have heard Shri Lobo the learned counsel for the petitioner and Shri Usgaonkar, the learned Senior Counsel for the respondent. Perused the impugned order.

3. It is submitted by Shri Lobo, the learned counsel for the petitioner that the original defendants no.1 and 2 had filed an application (Exhibit 12) for rejection of the plaint way back in the year 2011 on the ground that they have been incorrectly described in the plaint. It is pointed out that the said application was opposed on behalf of the defendant no.1 and learned trial court by an order dated 20/12/2011 had dismissed the said application. It is submitted that now after the commencement of the trial, the respondent no.1 moved an application for correcting the name of the original defendant no.2 in the cause title of the suit on a specious ground that in the cross examination of PW.1 on behalf of the petitioner, an Aadhaar card of the defendant no.2 was shown to the respondent no.1. It is submitted that this cannot be a ground to move the application for amendment, particularly after the commencement of the trial and the learned trial court was in error in allowing the application which has caused prejudice as the suit now would be protracted.

4. Shri Usgaonkar, the learned Senior Counsel for the respondents points out that the application for rejection of the plaint was opposed, as at the relevant time, the defendant nos.1 and 2 had not furnished any proof about the correct name. It is submitted that once the proof about the correct name of the defendant no.2, in the form of the aadhaar card of the defendant no.2 has surfaced, that the respondent no.1 filed an application for amendment. It is submitted that the learned trial court has rightly relied upon the decision of this Court in the case of **Rukmini Dattatraya Naik (Smt.) & others Vs. Paramandand Lalchand Joshi and others 2001 1 MahLJ. 290**, in order to hold that the cause title does not form part of the pleadings. It is thus submitted that strictly the application would not relate to the provisions of Order VI Rule 17 of C.P.C and the consequentially the proviso appended thereto would also not apply. It is submitted that there is a general power to amend under section 153 of C.P.C and in addition, the Court is also clothed with inherent power under section 151 to allow such correction, of the cause title. It is submitted that in any event the original defendants no.1 and 2 after the application for rejection of plaint filed by them was dismissed, had abandoned the suit and were proceeded ex parte. It is submitted that the petitioner who is the defendant no.3 cannot be permitted to challenge the order by which correction of the name of the defendant no.2 has been ordered

and there is no prejudice demonstrated.

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

6. At the outset it is necessary to note that by the amendment which has been allowed is the correction of the name of the defendant no.2. and therefore in normal circumstances, it is the defendant no.2 who can be said to have been aggrieved by the said correction, and not the petitioner who is the defendant no.3. That apart the learned trial court has rightly noticed that the cause title does form part of the pleadings and therefore the provisions of Order VI Rule 17 of C.P.C may not apply. Merely because the application is filed purportedly under Order VI Rule 17 of C.P.C would not make any difference. The Court is required to look at the substance, label of the wrong meaning of the provision under which the application is filed would not be decisive. The Court has a general power to amend under section 153 of C.P.C. where the court can allow the amendment for correcting any defect or error. In the present case it appears that the application for amendment was filed when PW1 was confronted with the aadhaar card of the defendant no.2 showing his correctness. It is in that view of the matter that the trial court has exercised its discretion in allowing the amendment, by allowing the

correction of the cause title. I do not find that the exercise of discretion by the trial court in such circumstance can be said to be perverse, so as to require interference under Article 227 of the Constitution of India. Needless to mention that whether such amendment would relate back to the filing of the suit can be gone into by the trial court while deciding the suit. Subject to this the petition is dismissed with no order as to costs.

C. V. BHADANG, J.

ap/-