

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.817 of 2016**

1. Shri Arjun Shaba Patyekar;

2. Smt. Subhadra Arjun Patyekar,

Both of major age,
Indian Nationals, residents of
H. No.718, Kulan, Surla, Taluka
Bicholim-Goa.

.. Petitioners

Versus

1. Shri Kashinath Shamba Naik
Gaunkar (since Deceased),
through his legal heirs:

1a) Shri Jagannath Kashinath Naik Gaoncar;

1b) Shri Jagannath Naik Gaoncar;

1c) Shri Shrikant Kashinath Naik Gaoncar;

1d) Smt. Shrikant Naik Gaoncar;

1e) Shri Manohar Kashinath Naik Gaoncar;

1f) Smt. Manohar Naik Gaoncar;

1g) Shri Shamba Kashinath Naik Gaoncar;

1h) Smt. Shamba Naik Gaoncar;

1i) Miss. Shobha Kashinath Naik Gaoncar,

All of major age, Indian
Nationals, residents of Gaoncarwada,
Surla, Bicholim-Goa.

1j) Shri Kamlakant Fadte;

1k) Smt. Saju Kamlakant Fadte

Both of major of age,
India Nationals, residents of
Bhagatwada, Amona-Goa.

- 1l) Shri Gajanand Sawant;
- 1m) Smt. Durga Gajanand Sawant,
Both of major age, Indian
Nationals, residents of Sarvan,
Karapur, Bicholim-Goa.
2. Smt. Taramati Kashinath Naik Gaunkar
of major age, Indian National,
resident of House No.620,
Gaunkarwada, Surla, Bicholim-Goa.
3. Shri Raghunath Shamba Naik Gaunkar
(since deceased), through his legal
heirs:
 - 3a) Smt. Pritabai Raghunath Naik Gaunkar,
widow of late Shri Raghunath Shamba
Naik Gaunkar;
 - 3b) Smt. Vasant Raghunath Naik Gaunkar;
 - 3c) Smt. Vaijanti Vasant Naik Gaunkar;
 - 3d) Shri Gokuldas Raghunath Naik Gaunkar;
 - 3e) Smt. Purva Gokuldas Naik Gaunkar;
 - 3f) Shri Dhanaji Raghunath Naik Gaunkar;
 - 3g) Shri Krishna Raghunath Naik Gaunkar;
 - 3h) Shri Prashant Raghunath Naik Gaunkar;
 - 3i) Shri Patnekar Raghunath Naik Gaunkar
 - 3j) Miss Maya Raghunath Naik Gaunkar,
All of major age, Indian Nationals,
residents of House No.631,
Gaunkarwada, Surla, Bicholim-Goa.
4. Shri Mahadeo Shamba Naik Gaunkar
(since deceased) through his legal
heirs:
 - 4a) Shri Vishwanath Mahadev Naik Gaunkar;

4b) Smt. Premavati Vishwanath Naik Gaunkar,

Both are of major age,
Indian Nationals, residents of
House No.632, Gaunkarwada, Surla,
Bicholim-Goa.

4c) Smt. Vimal Shrinivas Gawas Desai
of major age,
Indian National, resident of Shelde,
Quepem, Goa.

4d) Shri Shrinivas Gawas Desai
(since deceased), through his
legal heirs:

4da) Shri Bhushan Shrinivas
Gawas Desai, son, major
of age, Indian National,
unmarried, resident of Shelde,
Quepem-Goa.

4db) Miss Minika Shrinivas Gawas Desai,
daughter, major of age, unmarried,
resident of Shelde,
Quepem-Goa.

5. Shri Anant Tano Naik Gaunkar
(since deceased), through his
legal heirs:

5a) Smt Surekha Suresh Naik Gaunkar,
widow of late Shri Suresh Anant Naik
Gaunkar;

5b) Shri Ashok Anant Naik Gaunkar;
(since deceased)

5b(i) Shri Amay Ashok Naik Gaunkar (son)

5b(ii) Smt. Poonam Ashok Naik Gaunkar

5b(iii) Smt. Pallavi Ashok Naik Gaunkar
Residing at Gaunkarwaddoa Bicholim
Taluka-Goa.

5c) Smt. Anita Ashok Naik Gaunkar;

5d) Shri Tano Anant Naik Gaunkar;

5e) Smt. Tano Anant Naik Gaunkar,

All are of major age,
Indian Nationals,
Residents of House No.612,
Gaunkarwada, Surla, Bicholim-Goa.

5f) Smt. Asha Ravi Naik;

5g) Shri Ravi Naik,

both are of major age,
Indian Nationals,
residents of Revora,
Colvale, Bardez-Goa.

6. Shri Pundalik Rama Naik Gaunkar
(since deceased) through his
legal heirs:

6a) Shri Rama Pundalik Naik Gaunkar;

6b) Smt. Sita Rama Naik Gaunkar;

6c) Shri Yeshwant Pundalik Naik Gaunkar;

6d) Smt. Yeshwant Naik Gaunkar;

6e) Shri Atmaram Pundalik Naik Gaunkar;

6f) Smt. Atmaram Naik Gaunkar,

All are of major age,
Indian Nationals, residents of
House No.629, Gaunkarwada,
Surla, Bicholim-Goa.

6g) Smt. Mohini Ramesh Sawant;

6h) Shri Ramesh Sawant,

Both are of major age,
Indian Nationals, residents of
Saligao, Bardez-Goa

6i) Smt. Sunita Gajanan Dhawaskar;

6j) Shri Gajanan Dhawaskar,

Both are of major age, Indian Nationals,

residents of Dhawaskarwada,
Sarvan, Karapur, Bicholim-Goa.
(since deceased)

6(j)(1) Shri Sunil Dhawaskar (son),
Resident of Karapur,
Sarvant- Dawaskar Waddo

7. Shri Vasu Vithal Naik Gaunkar
(since deceased) through his
legal heirs:

7a) Shri Prakash Vasu Naik Gaunkar;

7b) Smt. Pratiksha Prakash Naik Gaunkar;

7c) Smt. Sugandha Ramnath Shet;

7d) Shri Ramnath Shet,

All are of major age,
Indian Nationals, residents of House
No.625, Gaunkarwada,
Surla, Bicholim-Goa.

7e) Shri Rohidas Vasu Naik Gaunkar;

7f) Shri Mohandas Vasu Naik Gaunkar;

7g) Smt. Mohandas Naik Gaunkar,

All are of major age, Indian Nationals,
residents of Gandhi Market, Margao, Goa.

7h) Smt. Mangal Narayan Fovkar;

7i) Shri Narayan Fovkar,

Both are of major age,
Indian Nationals,
residents of Tivrem,
Marcel-Goa

8. Shri Gajanan Vithal Naik Gaunkar
(since deceased) through his legal
heirs:

8a) Shri Santosh Gajanan Naik Gaunkar;

- 8b) Smt. Santosh Naik Gaunkar;
- 8c) Shri Ulhas Gajanan Naik Gaunkar;
- 8d) Smt. Ulhas Naik Gaunkar;
- 8e) Shri Sandeep Gajanan Naik Gaunkar,

All are of major age,
Indian Nationals, residents
of Gandhi Market, Margao, Goa.

- 9. Shri Vaman Rama Patyekar
(since deceased) through his
legal heirs:

- 9a) Smt. Hirabai Vaman Patyekar
(since deceased)
widow of late Shri Vaman Rama
Patyekar;

- 9b) Shri Rama Vaman Patyekar;

- 9c) Smt. Sita Vaman Patyekar,

All are of major age,
Indian Nationals, residents
of House No.627, Gaunkarwada,
Surla, Bicholim-Goa.

- 10. Comunidade of Surla,
through its Attorney,
Shri Gokuldas R. Naik Gaonkar,
of major age, Indian National,
resident of Gaonkarwada, Surla,
Bicholim-Goa.

- 11. The Administrator Of Comunidades
of North Zone, having office at
Mapusa, Bardez-Goa.

.. Respondents

Mr. D. J. Pangam and Mr. S. P. Munj, Advocates for the
petitioners.

Mr. J. P. Mulgaonkar, Advocate for the respondent nos.1(a-h),
3(a,c-i), 4(b), 5(a-e), 6(a-f), 7(a,b,d,e &g) and 8(a-d).

CORAM :- C. V. BHADANG, J.

DATE:- 17th January, 2018

ORAL JUDGMENT :

On 10/11/2017, the parties were put on notice that the petition would be taken up for final disposal at the admission stage. I have accordingly heard Shri Pangam, the learned Counsel for the petitioners and Shri Mulgaonkar, the learned Counsel for the contesting respondents and the petition is being disposed of finally.

2. The petitioners had filed a suit for declaration and injunction, claiming that the suit property corresponds to Land Registration No.42 while the contesting respondents claimed that the suit property corresponds to Land Registration No.484. The learned Trial Court dismissed the suit on 27/12/2005, which is challenged by the petitioners before the learned District Judge in F.A. No.88/2006, which is pending. During the course of the pendency of the said appeal, the petitioners filed an application (Exh.37) for amendment of plaint. In short, the petitioners' now want to introduce a plea that the suit property corresponds to old registration no.15340. This, according to the petitioners, has been necessitated on account of discovery of facts and documents subsequent to filing of the appeal. It appears that the petitioners

also filed a separate application (Exh.31) purportedly under Order XLI, Rule 27 of Code of Civil Procedure (CPC, for short) for production of the said documents. The learned Trial Court, by an order dated 16/10/2015, has stipulated that the said application for production of documents shall be decided along with the main appeal. However, application Exh.37 for amendment of the plaint has been rejected by an order dated 12/08/2016, which is subject matter of challenge in this petition.

3. On behalf of the petitioners, reliance is placed on the decision of the Supreme Court in the case of ***North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (Dead) By LRs***; (2008)8 SCC 511, in order to submit that the principles germane for deciding an application under Order XLI, Rule 27 of C.P.C. shall be similar while considering an application for amendment under Order VI, Rule 17 of CPC. It is submitted that once the Trial Court has deferred the consideration of the application for production of documents, the application for amendment could not have been dismissed and ought to be considered along with the application for production of documents at the stage of final hearing of the appeal.

4. Shri Mulgaonkar, the learned Counsel for the contesting respondents, in all fairness, submits that in the event the Court is inclined to interfere with the impugned order, rival contentions

may be left open.

5. I have carefully considered the circumstances and the submissions made.

6. The Hon'ble Supreme Court, in the case of ***North Eastern Railway Administration, Gorakhpur*** (supra) has held that an application under Order XLI, Rule 27 of CPC has to be taken up for consideration, at the final hearing of the appeal. It is trite that production of the documents can be allowed only in the event the Court allows amendment, which is based on said documents. If the amendment to the pleadings is not allowed, there is no question of allowing the production of the documents, as no amount of proof can help in the absence of pleadings. In that sense, the considerations while deciding the application under Order XLI, Rule 27 of CPC and an application under Order VI, Rule 17 of CPC would be similar. Thus, in my considered view, the learned District Judge, after having rightly deferred the consideration of the application under Order XLI, Rule 27 of CPC, could not have dismissed the application for amendment. In such circumstances, the petition is partly allowed. The impugned order is hereby set aside. The application Exh.37 is restored back to the file of the learned District Judge, to be considered on its own merits at the stage of final hearing of appeal along with application for production of documents. Rival contentions of the

parties are left open. The petition is disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA