

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 383 OF 2018

MARUTHPARAMBIL THOMAS JOB., ... Petitioner

Versus

JOSEPH JOSEPH KOTTANAL., ... Respondent

Shri Tukaram Gawas with Shri Ravi Gawas, Advocates for the petitioner.

Shri Guru Shirodkar, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 10th July 2018

P.C.

Heard the learned Counsel for the parties.

2. The petitioner, who is the original defendant, is challenging the order dated 07/09/2017, passed by the learned Trial Court below Exh.D-55, by which an application for amendment of the Written Statement, has been dismissed.

3. The brief facts are that the respondent/ plaintiff has filed Regular Civil Suit No.114/2013 against the petitioner/defendant for damages of Rs.33,555/- towards the damage caused to the compound wall, solar fencing and rubber plantation of the respondent. The respondent is also seeking an injunction against

the petitioner from restraining him from interfering with the suit property, which is Survey No.5/2 of village Nagargaon Sattari. The petitioner is an occupant of the adjoining land bearing Survey No.5/3.

4. The petitioner filed Written Statement and resisted the suit and raised a counterclaim. The petitioner, by virtue of the counterclaim, is seeking mandatory injunction against the respondent to vacate and demolish the suit compound wall and to bring the area to the extent of 220 square metres of the property to its original condition and further restraining the respondent from interfering in the suit property.

5. The petitioner filed an application for amendment of Written Statement, seeking introduction of following para 19a :

"19a. It is stated that the plaintiff has constructed chapel for prayer and worship of Christian lord Jesus Christ in property bearing survey number 5/2 of village Nagargao Sattari Goa. It is stated that under the canon law chapel is the property of church. It is stated that the Christian community regularly used to perform prayer, rosary and reading of bible etc in said chapel. It is stated that the defendant and his family members being Syro malbar catholic is having right to perform prayer, rosary and reading of bible etc in said chapel."

6. The application was opposed on behalf of the respondent.

7. The learned Trial Court, by the impugned order dated 07/09/2017, has dismissed the application, inter alia, on the ground that the suit involves a property dispute and not a religious one, which is now sought to be raised on behalf of the petitioner. The Trial Court has found that the petitioner never raised the issue with regard to the Chapel existing in the property Survey No.5/2 and in that view of the matter, the Trial Court has come to the conclusion that the petitioner is trying to bring on record an issue, which is unrelated to the subject matter of the suit and the counterclaim and that too after a period of 4 years. In short, according to the Trial Court, the proposed amendment is not necessary for deciding the real controversy between the parties.

8. On hearing the learned Counsel for the parties, I do not find that any case for interference is made out.

9. The Trial Court, in my considered view, is right in holding that the suit as well as the counterclaim pertains to the property dispute over the land Survey No.5/2 and about the legality of the construction of the compound wall and the solar fencing, etc. Thus, the Trial Court has rightly found that the proposed

amendment is not necessary for deciding the real controversy in the dispute. A finding that the proposed amendment is necessary for deciding the real controversy in the dispute, is a sine qua non for allowing the amendment. In the absence thereof, no exception can be taken to the impugned order, refusing to exercise discretion to grant amendment. The petition is, thus, without any merit and is, accordingly, dismissed with no order as to costs.

C. V. BHADANG, J.

SMA