

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 278 OF 2019**

**MADHUKAR GANBA NAIK GAONKAR (DEC)
REP. BY PETITIONER NO. 1(C) AND
ANR.,**

... Petitioners

Versus

**COMMUNIDADE OF CANACONA, REP. BY
ITS ATTORNEY, KRITESH NAIK GAONKAR
AND 6 ORS.,**

... Respondents

Adv. Rohan Rama Dessai for the Petitioners.

Adv. Hanumant D. Naik for Respondent no.1.

Mr. S. Usgaonkar, Senior Advocate with Adv. Ms. Mashelkar
Tanisha for the Respondent nos.2, 3 and 4

CORAM: C. V. BHADANG, J.

Date: 17th June, 2019.

Order:

The challenge in this petition is to the order dated 30/01/2019 (below Exhibit D-20) passed by the learned Adhoc District Judge, South Goa, Margao, in Regular Civil Appeal no.45/2017. By the impugned order, the application Exhibit D-20 filed by the petitioners for amendment of the plaint has been rejected.

2. The brief facts are that now deceased, Madhukar Ganba Naik Gaonkar and his wife, Smt. V. Gaonkar had filed Regular Civil Suit no.31/2011 for a declaration that they are owners of an area admeasuring 450 sq.mtrs from

out of land survey no.129/30 of village Agonda Taluka Canacona and for re-survey of the property by giving a separate survey number and recording it in the name of the plaintiffs and for mandatory injunction directing the defendants to demolish the toilet existing in the suit property, to remove the coconut saplings and restore the suit property to its original condition.

3. The suit was dismissed by the learned trial court by a judgment and decree dated 12/5/2017 which is subject matter of challenge at the instance of the petitioners before the learned District Judge, in Regular Civil Appeal no.45/2017.

4. The petitioners filed application (Exhibit D-20) for amendment of the plaint. It was contended that the suit property is part of the larger property registered in the Land Registration Office of Canacona under no.13788. However, due to typographical error and oversight, the petitioners pleaded that the suit property is enrolled under matriz no.102 instead of 104 and this was realized while preparing for the final arguments in the appeal. In the circumstances, the following amendment was sought:

(a) delete no.”102” appearing in line no.7 of paragraph 2 of the plaint and replace it with number “104”.

(b) delete words “and Gorbata Under matriz no.101 of Vitola

Rama Folo” appearing in the eastern boundary of Matriz in paragraph no.2 of the plaint.

(c) delete words **“By property Gorbata, of the said Rama”** appearing in the northern boundary of Matriz in paragraph no.2 of the plaint an replace it with words **“By Chactam of Ragobha Upasso Folo and others”**.

(d) delete words “By property Chactum under Matriz No.103 of Raghoba Upasso Folo and others” appearing in the southern boundary of Matriz in paragraph 2 of the plaint and replace it with words “by Bolo no.105 of said Raghoba and others”.

5. It was contended that the amendment is necessary for deciding the real controversy in the matter.

6. The application was opposed by the respondent nos.3 and 4 inter alia, on the ground that the same is belated and the proposed amendment is barred by limitation. It was contended that the proposed amendment changes the cause of action in as much as the applicant is now trying to introduce another matriz number with different boundaries, than the one given in the plaint and the proposed amendment will seriously prejudice the respondent nos.3 and 4.

7. The learned District Judge found that the survey in respect of the suit property has been promulgated and now a new Form No.I and XIV has been issued, by which the old matríz record has been replaced by Form No.I and XIV. The learned District Judge has found that the matríz record has no evidenciary value and thus the proposed amendment which seeks to introduce particulars of the matríz record is “strictly not necessary for determination of the controversy in the suit”. In that view of the matter the application has been dismissed.

8. On hearing the learned counsel for the parties and on perusal of the record, I do not find that any case for interference is made out at this stage. The suit was instituted way back in the year 2011 and after suffering a decree of dismissal of the suit, an appeal was filed in the year 2017. The amendment now proposes to introduce a different matríz number as 104 instead of 102. The writ petition is dismissed with no order as to costs, with liberty to the petitioner to challenge the impugned order in second appeal in the event the appeal is decided against the petitioner.

C. V. BHADANG, J.

ap/-

