

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 272 OF 2019**

1. Jacinta Ferrao,
w/o Cleto Rodrigues,
68 years of age, married,
agriculturist,

2. Cleto Rodrigues,
s/o late Adriano Rodrgues,
70 years of age,
married agriculturist,
Both r/o H. No.72/1 (Old)
269 9 (New) Senaulim
Verna, Salcete, Goa.

.... Petitioners

V e r s u s

1. Mr. Agnelo Medeira,
Son of late Amancio Medeira,
Major of age, married,
Business and his wife

2. Mrs. Maria Soccorina Candida Crasto,
@ Candida Medeira, Major of age,
housewife, married,
Both R/o H. No.316,
Manora Raia, Salcete, Goa.

3. The Sarpanch/Secretary,
Village Panchayat of Verna,
Salcete, Goa.

..... Respondents.

Adv. J. Abreu Lobo for the Petitioners.

Adv. Ms. Suzette Pereira for the Respondent nos.1 and 2.

Coram:- C. V. BHADANG, J.

Date:- 6th June 2019.

Oral Order:

On 12/3/2019, a notice that the petition could be taken up for final disposal at the stage of admission was issued.

2. I have heard the learned counsel for the petitioners and the learned counsel for the respondent nos.1 and 2. None appears for the third respondent, though served.

3. The challenge in this petition is to the order dated 17/12/2018 passed by the learned trial court, refusing to grant an application for amendment filed by the petitioners/plaintiffs.

4. The petitioner has filed a suit inter alia seeking a declaration that he is the mundkar of the suit house. There are certain other prayers made including a challenge to the technical clearance granted to the respondent nos.1 and 2 on 25/8/2011.

5. The petitioner filed an application for amendment seeking to delete paragraphs 25 and 27 and prayer clause (a) pertaining to the declaration as to mundkarship and for adding the words “in any manner with dwelling house and the mundkarial area in possession of the plaintiffs” after the words

“interfered with” in prayer clause (d) in para 35. Admittedly this was a pre-trial amendment.

6. The application was opposed on behalf of the respondent nos.1 and 2.

7. The learned trial court has dismissed the application with the following order:

“Heard Adv. for the plaintiff and defendant. Perused records. It is seen that the plaintiff by this amendment is trying to change the nature of the suit, wherein the plaintiff have prayed for the relief of declaration of mundkarship, which this court cannot grant.

Even otherwise as regards the Mundkarial house and the area under S 5 of the Mundkar Act Mamlatdar is having power to grant injunction.

Even the Technical Clearance can be challenged by the plaintiff under the Panchayat Raj Act. Hence in view of the above the application cannot be granted. Hence dismissed.”

8. The only question before the trial court was whether the amendment could have been allowed or not. Paragraphs 25 and 27 pertain to the averments as to the prayer for declaration of mundkarship, claimed by the petitioner, which the learned counsel for the petitioner in all fairness submitted that, cannot be granted by the Civil Court. Thus all that the

petitioner sought by the proposed amendment is to delete the paragraphs 25 and 27 and the consequential prayer clause (a).

9. The learned counsel for the respondent has strenuously urged that even the other prayers as to the injunction and the challenge to the grant of technical clearance are not competent before the Civil Court. It is submitted that the suit as framed and filed is not maintainable. She also points out that an application for rejection of the plaint under Order VII Rule 11 is filed and is pending before the trial court. It is submitted that the trial court has rightly refused to grant the amendment as the suit itself is not maintainable.

10. I am afraid these contentions cannot be considered while examining a challenge to the order refusing to carry out amendment. There are other prayers made in the plaint. The question whether those prayers are competent before the civil court or not, can always be gone into by the trial court while deciding the application under Order VII Rule 11 of C.P.C., which the trial court shall decide on its own merits. However, in my considered view, the amendment which merely proposes to delete prayer clause (a) as to declaration of mundkarship which was otherwise not competent before the civil court could not have been refused. The petition is accordingly allowed. The impugned order is hereby set aside. The application for amendment is

allowed, as prayed. The petitioner shall carry out the amendment within three weeks from today. Needles to mention that the trial court shall decide the application under Order VII Rule 11 of C.P.C filed by the respondent nos.1 and 2 on its own merits and in accordance with law. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

ap/-