

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 397 OF 2016**

1. Mr. Joao Piedade Gonsalves,
aged about 65 years,
Son of late Salvador Gonsalves,
Service, and his wife,
 2. Mrs. Santomina Gonsalves,
Wife of Mr. Joao Piedade C. Gonsalves,
Aged about 53 years,
Both resident of House No.182,
Desso Naik, Orlim, Salcete-Goa.
- Petitioners

V e r s u s

1. Dr. Messias Augustinho Sebastiao Pereira,
Son of Roque Silvester Lingorio Pereira,
Major of age, and his wife,
2. Mrs. Sabina Hafali Pereira,
Major of age,
Both Residents of Kamat Villa No.22,
Karant, Caranzalem, Ilhas Goa.
3. Mr. Joaquim M. Gosalves,
Major of age,
Son of late Salvador Gonsalves,
Resident of House No.181,
Desso Naik, Orlim, Salcete-Goa.
4. Mr. Jose Moises Gonsalves,
Major of age,
Son of late Salvador Gonsalves,
and his wife,
5. Mrs. Carmina Gonsalves,
Major of age,
Both residents of Sneha 30-B Wing,
Flat no.207, 2nd floor,

Lokhandwala Complex,
Mumbai-58.

6. Mr. Cristopher Gonsalves,
Major of age,
Son of Joaquim M. Gonsalves,
Resident of House no.181,
Desso Naik, Orlim, Salcete-Goa.
7. Mr. Wellingtine Gonsalves,
Major of age,
Son of Joaquim M. Gonsalves,
Resident of House no.181,
Desso Naik, Orlim, Salcete-Goa.
8. Minguelito Pereira
Since deceased, through her Legal
representatives,
 - a) Mrs. Olivia Colaco,
Major of age,
Resident of Orlim,
Sambati, Salcete, Goa.
 - b) Mrs. Clarina (Trishna) Pereira,
Major of age, married to
 - c) Mr. Subash Mandrekar,
Major of age,
Both residents of Carlos Apartments,
3rd floor, Pedda,
Margao Salcete, Goa.
 - d) Mrs. Maria Pereira,
Major of age, married to
 - c) Mr. Mario Almeida,
Major of age,
Both residents of Andrade Building,
Pedda, Margao, Salcete, Goa.
 - f) Mrs. Helena Pereira,

Major of age, married to

- g) Mr. Melvin Andrade,
Major of age,
Both living in Dubai,
Represented by her
Sister Maria Pereira (Power of Attorney),
Resident of Andrade Building, Salcete Goa.
9. Alvaro Anastasio Caetano do Bom Parto Pereira,
Since deceased, through his legal representatives
- a) Mrs. Filomena Vaz,
Major of age,
Resident of H. No.50/15,
Orlim, Salcete, Goa.
- b) Mr. Samniro Pereira,
Major of age, married to
- c) Mrs. Batty Pereira,
Major of age,
Both residents of
Orlim Salcete Goa.
- d) Mr. Morgan Pereira,
Major of age, Married to
- c) Mrs. Ursulu Rohrer,
Major of age,
Both residents of Godinho
Guest House, Shantinagar,
Aquem Baixo,
C/o Nicolau Godinho,
Resident of H. No.990,
1st floor, Navelim Salcete Goa.
- f) Miss Lorena Pereira,
Major of age,
Resident of Hosue no.50/15,
Desso Naik, Orlim, Salcte Goa.

.... Respondents

Coram:- C. V. BHADANG, J.

Date:- 22nd February 2019.

Oral Judgment:

Heard Mr. Arolkar, the learned counsel for the petitioners. None appears for the respondents.

2. By this petition, the petitioners/original defendant nos.3 and 4 are challenging the order dated 15/2/2016 passed by the trial court thereby allowing an application Exhibit D-88 filed by the respondent nos.1 and 2 (original plaintiffs) for addition of parties.

3. According to the respondents/plaintiffs the suit was initially filed for permanent injunction and demolition and thereafter the plaint was amended seeking a relief of declaration. It was contended that therefore the sisters of the plaintiffs and others need to be added as defendants nos.9 to 36 along with their spouse/s. Indisputably the application was filed at a stage when the suit was fixed for final arguments. The learned trial court in para 6 of the impugned order has held thus:

" Upon perusal of the plaint, the relief of declaration was sought in the year 2012 and now when the matter was fixed for final arguments the plaintiffs have filed the present application. There is no justification from the plaintiffs as to why this application for joining the parties was not filed at the earliest given opportunity. Hence, I

pass the following."

ORDER:

The present application stands allowed with a cost of Rs.1000/- to be paid to the defendant. The plaintiff to carry out the amendment to the plaint within a period of four days.

4. From the perusal of the impugned order two things are clear. First, that there is no consideration whether the parties to be added are necessary or proper parties and secondly the operative order allowing the application is clearly contrary to the finding and the observations in para 6 of the impugned order.

5. In such circumstances, I find that it would be appropriate that the learned trial court reconsiders application Exhibit D-88 on its own merits. The petition is partly allowed. The impugned order dated 15/2/2016 is hereby set aside. The application Exhibit D-88 is restored back to the file of the learned trial court which shall decide the same afresh and in accordance with law. In the circumstances, Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

ap/-