

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 645 OF 2018

Mr. Jose Roque Pinto,
Resident of House No.E/90,
A. V. Lourenco Road, Margao,
Salcete, Goa.

... Petitioner

V e r s u s

1. Mr. Jose Vivek Dias,
Resident of House No.91,
A. V. Lourenco Road,
Margao, Salcete – Goa.
2. Mr. Jose Luciano Miquelinho
Da Piedade Dias alias
Jose L.M.P.Dias,
Resident of House No.91,
A. V. Lourenco Road,
Margao, Salcete – Goa.
3. The Member Secretary,
South Goa Planning and Development
Authority, Margao, Salcete, Goa.
4. Member Secretary
Conservation Committee,
Town and Country Planning Board,
Dempo Towers, Panaji, Goa.
5. Chief Municipal Officer,
Margao Municipal Council
6. State of Goa,
Through its Chief Secretary,
Secretariat Porvorim,
Bardez-Goa.

... Respondents

(Registered addresses)

Shri C. Padgaonkar, Advocate for the Petitioner.

Shri Ryan Menezes, Advocate for the Respondent nos.1 and 2.

Shri Menino Pereira, Advocate for the Respondent no.3.

Shri C. A. Coutinho, Advocate for the Respondent no.5.

Ms. Priyanka Kamat, Additional Government Advocate for the Respondent No.6.

<u>Coram :-</u>	<u>C. V. BHADANG, J.</u>
<u>Reserved for Order on:-</u>	<u>20th February 2019.</u>
<u>Order Pronounced on:-</u>	<u>26th February 2019.</u>

ORDER

1. On 11.07.2018, a notice for final disposal was issued in this case. I have accordingly heard the learned Counsel for the parties and the petition is being disposed off finally.

2. The petitioner has filed a suit against the respondents alleging that the construction carried out by the respondent nos.1 and 2 is illegal and is by way of an encroachment in the suit property of the petitioner. It is the specific case made out by the petitioner that the development permission granted by the respondent no.3, the NOC granted by the respondent no.4 and the construction licence granted by the respondent no.5 for construction of a bungalow by the respondent nos.1 and 2 is obtained by them fraudulently and by misrepresentation.

3. The petitioner filed an application, exhibit 77, for amendment of the plaint seeking to incorporate para 16(a) after the existing para 16 of the plaint. The ground for seeking the amendment is that the petitioner had applied to the respondent no.3 under the Right to Information Act (RTI Act, for short) requesting for copies of the documents submitted by the respondent nos.1 and 2, for obtaining development permission. One of the documents, which was furnished to the petitioner was an annexure to Form B, Part I, Part II and III submitted by the respondent no.2 and his Architect. The said document has been produced by the petitioner before the Trial Court. At a later stage, the petitioner again asked for the very same documents which were earlier obtained from the respondent no.3. The respondent no.3 furnished a copy of the annexure to Form B Para I, II and III in response to the second application. It is contended that a comparison between the two would show that the respondent no.3 had played mischief while giving copy of the said document on the earlier occasion. It is contended that the entry nos.15, 16, 38, 39 and 40 were completely obliterated while entry against serial no.37 was partly obliterated while furnishing the document on the earlier occasion. It is contended that the entries which were suppressed as being obliterated, have a significant bearing on

the legality to the structure, put up by the respondent nos.1 and 2 in the property bearing chalta nos.62 and 63 of P.T. Sheet No.179 which is the suit property. The proposed amendment, according to the petitioner, is based on the effect of the document supplied by the third respondent in pursuance of two successive applications under the RTI Act.

4. The application was opposed on behalf of the respondents.

5. The learned Trial Court by the impugned order dated 23.10.2017, has rejected the application on the ground that Order VI Rule 2(1) of C.P.C. lays down that every pleading shall contain, and contain only, a statement in a concise form of the material facts, on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. In short, in the opinion of the learned Trial Court, the proposed amendment seeks to plead contents of the copies of the annexures to Form B supplied by the third respondent at two different points of time which is evidence in support of the case already made out.

6. I have heard the learned Counsel for the parties and perused record.

7. There cannot be any manner of dispute with the proposition that only the material facts need to be pleaded and not the evidence which is to be tendered in support of such pleadings. However, in a given case, there is a thin line between the material fact which needs to be pleaded and the evidence in support thereof. On a careful perusal of the amendment as proposed by introduction of para 16(a), I find that the entire para 16(a) cannot be termed as an attempt to plead evidence. In my considered view, the following portion of para 16(a) can be allowed to be introduced namely :

“16(a) (i) As already stated, the plaintiff had applied to the Defendant no.3 under the Right to Information for documents which the Defendant no. 1 and 2 had submitted to the said authority for obtaining development permission. One of the documents which was furnished to the Plaintiff by the Public Information Officer of the SGPDA who also happens to be its Member Secretary was annexure to Form B Part I, Part II & III submitted by the Defendant No.2 and his Architect. The said document thereafter was produced by the Plaintiff before this Hon'ble Court and forms a part of the record of this Hon'ble Court. A copy thereof is annexed hereto.

At a later stage, the Plaintiff happened to ask for copies of the very documents which he had earlier obtained from the Defendant no. 3 and the copy of the annexure to Form B in part I, II and III came to be furnished by the Public Information Officer of the SGPDA to the Plaintiff. Annexed hereto is the copy

A comparison between the two, would show that the Defendant No. 3 has played mischief while giving to the Plaintiff copy of the said document, namely, Annexure to Form B on the first occasion.

A comparison between the two documents furnished to the Plaintiff at different times indicate that on the first page entry no. 15 and 16 were obliterated cunningly while giving copies of the said document on the first occasion. Likewise, entries against Sr. no. 38, 39 and 40 were completely obliterated while giving copy of the document on the first occasion and entry against Sr. No. 37 partly obliterated. The entries which were thus cleverly suppressed from the Plaintiff by the Defendant no. 3 have a significant bearing on the legality of the structure put up by the Defendant no. 1 & 2 in the property bearing Chalta no. 62 and 63 of P. T. Sheet No.179.

(ii) The Defendant No.3 has acted malafidely in the matter not only while issuing the development permission, but has also acted malafidely while giving information relating to the construction carried out by the Defendant no. 1 and 2 as available in their record in a bid to mislead the Plaintiff and this Hon'ble Court and cover up a fraud it had played on the regulations to approve the putting up of the construction which did not fit in the parameters prescribed by law."

8. I find that the rest of the contents of para 16(a) are either matters of evidence or arguments.

9. The amendment to the extent it is being allowed, in my considered view, is based on a subsequent event of the petitioner obtaining the information on the second occasion from the third respondent. The amendment is sought at a stage prior to the commencement of trial. In such circumstances, the petition is partly allowed. The impugned order is hereby set aside. The amendment as set out in para 6 above is allowed. The amendment shall be carried out within a period of two weeks from today.

10. Needless to mention, the respondents shall be entitled to carry out consequential amendment/file additional written statement, if any and if so advised.

11. The Trial Court shall decide the suit as expeditiously as possible.

12. The petition is disposed off in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

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