

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.826 OF 2018

1. Shri Namdev Rajaram Gawde,
Son of late Rajaram Gawde,
45 years of age, married, business
Represented by petitioner no.2 his wife
2. Smt. Namrata Namdev Gawde,
Wife of Namdev Rajaram Gawde,
39 years of age, advocate,
Both Indian National, r/o S-5,
Block 3, 2nd floor,
Madhuvihar Co-op. Housing Society,
St. Inez, Panaji-Goa. Petitioners

V e r s u s

1. Mr. Devanand Rajaram Gawde,
s/o Late Rajaram V. Gawde,
Major of age, businessman and
his wife,
2. Smt. Darshana @ Sangeeta Devanand Gawde,
Major of age, Housewife, Both r/o H.No.599,
Warchawadda, Morjim, Pernem, Goa.
3. Shri Waman Sadashiv Joshi,
Son of late Sadashiv Kashinath Joshi,
Age 46 years,
4. Shri Raghunath Sadashiv Joshi,
Son of late Sadashiv Kashinath Joshi,
Age 42 years, married, service and his wife
5. Smt. Uma Raghunath Joshi,
Wife of Shri Raghunath Joshi,
36 years, married, service,
All Indian Nationals, r/o. H.No.500,
Varchawada, Morjim, Pernem-Goa.
6. Smt. Chandrawati Rajaram Gawde,
Widow of Rajaran Vithal Gawade,

major, r/o H. No.599, Warchawadda,
Morjim, Pernem, Goa
(deceased through LR's)

- 6a) Shri Vasudev Rajaram Gawde,
Son of late Rajaran Gawde,
Age 42 years, business and his wife,
- 6b) Smt Vandana @ Nirmala Vasudev Gawde,
Age 40 years, housewife,
Both r/o. 4-A/28, Valis Bhat,
St. Inez, Panaji-Goa.
- 6c) Smt. Lata @ Sweta Shamsunder Gawas,
d/o. late Rajaram Gawde,
major of age, housewife,
- 6d) Shri Shamsunder Laxman Gawas,
Major of age, service,
Both r/o. H. No. not known, Masoda,
Valpoi, Sattari-Goa.
- 6e) Smt. Ranjana @ Shrutika Shridhar Gawas,
d/o late Rajaram Gawde, major of age,
housewife and her husband
- 6f)Shri Shridhar Mohan Gawas,
Son of Mohan Gawas, major of age,
Both r/o. H. No. not known, Vadi,
Nadora, Bardez-Goa.
- 7 Shri Kashinath Vithal Gawde,(Expired)
s/o Late Vithal Gawde,
major of age, Widower.
- 8. Shri Tukaram Kashinath Gawde,
s/o Kashinath Gawde,
major of age, Govt. Service, and his wife
- 9. Smt. Tejasvi Tukaram Gawde,
major of age, housewife,

Al r/o c/o Ramesh Vasudev
Shetgaonkar,
H. No.573, Varchawadda,
Morjim, Pernem, Goa.

10. Smt. Nalini Ramesh Shetygaonkar,
d/o Shri Kashinath Gawde,
major of age, housewife and her
husband,
 11. Shri Ramesh Vasudev Shetgaonkar,
s/o late Vasudev Shetgaonark
major of age, Both r/o H. No.573,
Varchawadda, Morjim, Pernem, Goa
 12. Smt. Malini Krishna Sawant,
d/o of Shri Kashinath Gawde,
major of age, married, housewife,
and her husband
 13. Shri Krishna Ramchandra Sawant,
s/o of late Ramchandra Sawant,
major of age, Both r/o H. No.372,
Auchitwada, Asnora, Bardez, Goa.
 14. Smt. Shalini Ghanashyam Naik,
d/o Kashinath Gawde,
housewife, and her husband,
 15. Shri Ghanashyam Keshav Naik,
s/o Shri Keshav Naik,
major of age, Both r/o H.No.115,
Khairat vaddo, Revoda, Bardez,
Goa.
- Respondents

Petitioner No.2 in person.

Mr. Arjun Naik, Advocate for the Respondent nos.1, 2, 6(a) to 15.

Mr. Prasheen Lotlikar, Advocate for the Respondent nos.3, 4 and 5.

Coram :- C. V. BHADANG, J.

Date :- 23rd August, 2019.

ORAL JUDGMENT

1. Rule, made returnable forthwith. The learned Counsel for the contesting respondents waive service. Heard finally by consent of parties.

2. The challenge in this petition is to the following orders passed by the learned Civil Judge, Junior Division at Pernem in Regular Civil Suit No.37/2012 :

(i) An order dated 19.07.2018 by which an application, exhibit 81, for amendment of issue no.2 has been dismissed.

(ii) An order dated 26.07.2018, by which an application, exhibit 86, for amendment of the plaint has been dismissed.

(iii) An order dated 26.07.2018 by which an application, exhibit 87, under Order I Rule 10(2) of the Civil Procedure Code (CPC) for addition of parties has been dismissed.

3. The petitioners are the original plaintiffs while the respondents are the defendants. The aforesaid suit has been

filed by the petitioners for a declaration that the Memorandum of Understanding (MOU) dated 03.07.2008 executed by and between the defendant nos.3 to 5 and the defendant no.1 purportedly on behalf of the parents of the petitioner no.1 and yet another MOU executed by and between defendant nos.3 to 5 and the defendant nos.7 to 15 is null and void and not binding on the petitioners. The petitioners are also seeking an order for restraining defendant nos.3 to 5 from interfering with the possession of the defendants over the suit property.

4. Admittedly, the trial in the suit has commenced in which the petitioners' witness no.1 has been examined and cross examined.

5. The Trial Court has framed in all five issues out of which issue no.2 reads as under :

“Whether the plaintiffs prove that they are in possession of the suit property ?”

6. By virtue of the application, exhibit 81, the petitioners want the said issue to be amended/modified as under :

“Whether the plaintiffs prove that they are in possession of the suit property as tenants?”

7. The said application has been dismissed by the learned Trial Court on the ground that, in the plaint, the petitioners have not claimed that they are tenants in respect of the suit property.

8. On a careful perusal of the plaint, it appears that the case made out by the petitioners is that the late grandfather of the petitioner no.1 Vithal Kusso Gawde is recorded as tenant in the tenant's column and the name of the father of the petitioner no.1 is recorded in the cultivators column of Form I and XIV. In other words, the petitioners are claiming to have inherited the tenancy rights through their ancestors namely the grandfather of the petitioner no.1.

9. From the nature of the pleadings, it appears that they are claiming that they are the tenants of the suit property. I find that the issue can be modified as under :

“ Whether the plaintiffs prove that they are in possession of the suit property as having inherited the tenancy rights from the grandfather of the plaintiff no.1 ?”

This would adequately take care of the pleadings in the plaint and the denial in the written statement which in fact give rise to the issue.

10. Coming to the application, exhibit 86, for amendment of the plaint. The plaintiffs want to add the following portions in para 2 and 4 of the plaint :

At the end of para 2

“Plaintiffs are in possession and enjoyment of suit property as tenants.”

At the end of para 21

“There is no provision in law for compromise/settlement of dispute of land by executing Memorandum of Understanding by parties.”

11. The learned Trial Court has dismissed the application, inter alia, on the ground that it is filed after the commencement of the trial and the requirement of proviso to Order I Rule 10 of CPC is not satisfied.

12. The petitioner no.2, who appears in person, has submitted that an amendment can be allowed at any stage of the proceedings.

13. There cannot be any manner of dispute that the Court has wide power to allow all such amendments, which are necessary for deciding the real controversy in the matter. The question whether such amendment is necessary to decide the real controversy between the parties would depend upon facts and circumstances of each case. There is an additional requirement which a party should satisfy where the amendment is brought after the commencement of the trial. As per the proviso to Order VI Rule 17 of C.P.C, a party bringing such amendment after the commencement of the trial has to satisfy that the amendment could not have been brought prior to the commencement of the trial inspite of due diligence.

14. I have considered the submissions made and I find that in the present case, it is not necessary to go into these aspects as the amendment proposed in para 2 of the plaint is superfluous, as the petitioners have already pleaded that they have inherited the tenancy rights from the grandfather of the petitioner no.1. Insofar as the addition to paragraph 21 is

concerned, it is a matter of argument and not pleading. Thus, no case for interference is made out in the order dismissing application, exhibit 86.

15. This takes me to the application, exhibit 87, for addition of parties. According to the petitioners, out of inadvertence, the heirs of the original landlords were not made parties to the suit. Further, according to the petitioners, late Kashinath Ramnath Joshi and Yeshwant Kashinath Joshi were the original landlords of the petitioners and their heirs have fraudulently transferred part of the suit property to the original defendant nos.3 to 5. In such circumstances, the petitioners are seeking addition of the parties as set out in para 6 of the application.

16. This application has been dismissed by the Trial Court on the ground that the proposed parties are neither necessary nor proper parties.

17. I find that the only relief claimed in the suit is as regards the two MOUs dated 03.07.2008 one each executed by the defendant nos.3 to 5 in favour of the defendant no.1 and the other in favour of defendant nos.7 to 15. Thus, no exception can be taken to the finding recorded by the Trial Court when the parties who are proposed to be added are neither

necessary nor proper parties. In that view of the matter, no case for interference is made out in the order dismissing application, exhibit 87.

18. In the result, the following order is passed :

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order dated 19.07.2018, below exhibit 81, is hereby set aside.
- (iii) The issue no.2 shall stand modified as under :

“Whether the plaintiffs prove that they are in possession of the suit property as having inherited the tenancy rights from the grandfather of the plaintiff no.1 ?”
- (iv) The dismissal of the applications, exhibit 86 and 87, is hereby confirmed.
- (v) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

arp/*