

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1019 OF 2018

FILIPE ZACARIAS ALMEIDA AND 6
ORS.,

... Petitioners

Versus

DAMODAR GADEKAR AND 3 ORS.,

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Petitioners.

Mr. Eeshan Usapkar, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 13th February 2019

P.C.

The petitioners, who are the original plaintiffs are challenging following orders in this petition:

- (i) The order dated 03.09.2018, by which, the last para of the Commissioner's report dated 04.08.2018 has been discarded.
- (ii) The order dated 03.09.2018, by which, an application (Exhibit D-65) for amendment of the plaint was rejected.
- (iii) The order dated 24.09.2018, by which, second application (Exhibit-67) for amendment of the plaint has been rejected.

2. I have heard Mr. Bhobe, the learned Counsel for the petitioners and Mr. Usapkar, the learned Counsel for the respondents. Perused record.

3. Insofar as the first order is concerned, it does appear that the Commissioner acted beyond the reference. This is apparent from the fact that the Commissioner has recorded in his report that it was at the request of the petitioner, Mr. Filipe Zacarias Almeida that he had shown the area of the portion along the existing structure lying in Chalta No. 13 of P.T. Sheet No. 145 and has recorded that the area of the rectangular portion works out to 6.25 square metres. Therefore, no exception can be taken to the order discarding last para of the report of the Commissioner.

4. Coming to the other two orders, by which, two successive amendment applications were rejected, the applications for amendment were solely based on the report of the Commissioner. I do not find that the Trial Court is in error in dismissing these applications.

5. Mr. Bhobe, the learned Counsel for the petitioners submitted that the petitioners may be granted leave to file an application for amendment (not connected with the report of the Commissioner) for which, the learned Counsel for the respondents has no objection.

6. In that view of the matter, the petition is dismissed, with no order as to costs. The petitioners would be at liberty to file application for amendment to the plaint (not connected with the

report of the Commissioner), if so advised. If such an application is filed, the learned Trial Court shall decide the same on its own merits and in accordance with law.

C. V. BHADANG, J.

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