

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1041 OF 2018**

M/s Zoom Enterprises Ltd., A Company incorporated under the Companies Act, 1956, having its registered Office at X-1, 8/3, Block-EP, Sector-V, Salt Lake, Kolkata-700 091. Represented by Power of Attorney, Mr. Pallab Sanyal, son of Pulokesh Sanyal, age 49 years, married, occupation service, resident of BL-199, Sector-II, Salt Lake, Kolkata-700 091.

.... Petitioner

Versus

Aldeia Branca Real Estates Resorts & Properties Pvt. Ltd., A Company registered under the Companies Act, 1956, having its office at 2nd Floor, Bella Vista Apartments, Louis Miranda Road, Margao, Salcete, Goa. Represented by its Director, Dr. Sidney Moraes, major of age, married, occupation businessman, Indian National, resident of Panaji, Goa. Having office at 2nd Floor, Bella Vista Apartments, Louis Miranda Road, Margao, Salcete, Goa.

.... Respondent

Mr. Sudesh M. Usgaonkar with Ms. Rosette Pereira, Advocates for the Petitioner.

Mr. I. Santimano, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.**DATE : 6th February, 2019.****ORAL JUDGMENT:**

Rule made returnable forthwith. The learned Counsel, waives service for the respondent. Heard finally by consent of parties.

2. By this petition, the petitioner/plaintiff is challenging the order dated 06.09.2018, below Exhibit D-24, by which, an application for amendment of the plaint filed by the petitioner has been dismissed.

3. The petitioner has filed Regular Civil Suit No. 272/2016, against the respondent for declaration, recovery of money, permanent injunction and other consequential reliefs. Land bearing survey no. 233/1 of village Nuvem admeasuring 8,000 square metres happens to be the subject matter of suit. Admittedly, there is a leave and licence agreement executed between the parties, by which, the land which is claimed to be owned by the petitioner is given on leave and licence basis to the respondent under an agreement dated 19.01.2016 for a period from 01.11.2015 to 30.09.2016. As the respondent failed to pay the licence fee and to vacate the land on expiry of the licence, the suit came to be filed for various reliefs as set out above.

4. The respondent filed written statement and *inter alia* contended that the petitioner is not the owner of the entire 8,000 square metres of land, which is subject matter of leave and licence agreement. It was contended that it came to the

knowledge of the respondent that only an area of 1,800 square metres falls and is a part of survey no. 233/1, while the remaining area of 6,200 square metres is falling in survey no. 234/0, which is owned by the Comunidade of Margao and Comunidade of Verna. In short, it was contended that two Comunidades claim ownership to the said portion of land, which comprises of about 3/4th of land occupied by the defendant and which is falling outside survey no. 233/1 of Nuvem.

5. On the basis of the rival pleadings, the learned trial Court framed issues on 05.01.2018 and the issue no. 1 is whether the plaintiff proves that they are the owners of the entire suit property admeasuring 8,000 square metres.

6. The amendment now sought can be classified into four parts. Under the first part, the petitioner seeks to introduce paras 2A to 2K after the existing para 2. By the second part, the petitioner seeks substitution of paras 3 and 4 by the proposed paras 3, 3A and 4. By the third part, the petitioner seeks to incorporate an additional para 20A, claiming that they are entitled to evict the respondent from the suit plot and lastly, by the fourth part, the petitioner seeks to introduce

para 22A after the existing para 22, claiming that the petitioner is entitled to recover from the respondent an amount of Rs.45,000/- per month from 01.08.2016 and addition of prayer clause (aa) after the existing prayer clause (a).

7. The application for amendment was resisted by the respondent.

8. The learned Trial Court by the impugned order found that there was no prayer for eviction and there is no satisfactory explanation for not claiming the reliefs earlier. Secondly, it has been found that the amendment if allowed, would change the nature of the suit and would take away the right, which has accrued to the defendant. In that view of the matter, the application was dismissed.

9. On hearing the learned Counsel for the parties, I find that the impugned order cannot be sustained. As noticed earlier, there is a leave and licence agreement executed between the parties. There is also an issue of title framed by the Trial Court. The plaint read as a whole also shows that in paras 18 and 19, the petitioner had claimed that the respondent was liable to hand over the possession of the suit plot. Even the

claim about Rs.45,000/- per month from 01.08.2016 till full and final payment and handing over of the entire possession of the suit property, is made in prayer clause (c). Thus, the proposed amendment cannot be said to be changing the nature of the suit. In fact, the proposed amendment can be said to be a consequence to the specific denial of the title of the petitioner by the respondent.

10. In the result the following order is passed:

O R D E R

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The application (Exhibit D-24) is hereby allowed.
- (iv) Necessary amendment to be carried out within two weeks.
- (v) Needless to mention that the respondent would be entitled to file additional written statement and/or carry out consequential amendment to the written statement, if so advised.
- (vi) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

EV