

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 705 OF 2019.

KENNETH LUIS CUPERTINO
OSCORIO SALDANHA AND ANR.,

... Petitioners.

Versus

GOA INN PVT. LTD., REP. BY AUT.
SIGN., URVINDRA SINGH GUJRAL
AND 6 ORS.,

... Respondents

Shri Gaurish N. Agni and Shri T. Gawas, Advocates for the petitioners.

Shri E. Usapkar, Advocate for the respondent no.1.

Shri Shivan Desai, Shri J. Ramaiya and Ms. M. Viegas, Advocates for the respondent no.2.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 21st January 2020.

P.C.

The petitioners and respondents 3 to 5 sold a portion of their property to the first respondent. They have sold another portion to the second respondent. Thereafter, there arose certain disputes. As a result, the first respondent, one of the purchasers, filed Special Civil Suit No.12/2015/A, before the Civil Judge, Senior Division, Vasco da Gama. He filed that suit against the second respondent, that is the other purchaser, and all his vendors—the petitioners and the respondents 3 to 5 in this Writ Petition.

2. In the suit, the first respondent sought a declaration and perpetual injunction. In fact, the dispute concerns a passage and the

boundaries of the suit property.

3. In due course, the trial has begun. When PW1 was being examined, the petitioners, as the defendants 3 and 4, applied for amending their written statement. They wanted to admit a few paragraphs of the plaint, besides accepting the plaintiff's case in toto.

4. The trial Court, through its order dated 3.7.2019, dismissed the Exh.52 amendment application. It has felt that in the amendment application, the petitioners have not provided any reason for changing their stand.

5. Aggrieved the petitioners have filed this Writ Petition.

6. Shri G. Agni, the learned counsel for the petitioners, has submitted that the trial Court has taken a hyper technical approach to the issue. He agrees that Order 6 Rule 17 of CPC imposes restrictions on how, why, and when amendment should be effected. He nevertheless maintains that there is no absolute bar against all amendments. To elaborate, he has submitted that here the petitioners, as two of the co-owners, wanted to admit certain aspects of the plaintiff's case. It only shortens the litigation. Therefore, the trial Court's rejecting the petitioners' application for amendment cannot be sustained; it rather affects the cause of justice. Shri E. Usapkar, the learned counsel for the respondent no.1, supports the petitioners' case.

7. On the other hand, Shri S. Desai, the learned counsel for the second respondent, that is the first defendant, has submitted that the trial Court has assigned cogent reasons why it has rejected the petitioners' application for amendment. According to him, the pleadings have legal sanctity attached to them. Parties cannot change the pleadings mid-stream causing prejudice to the other party's interest. Shri Desai has also submitted that the petitioners, as the co-vendors, have now decided to support one purchaser at the expense of other. And that was with a *mala fide* intention. This devious method, he stresses, cannot be allowed. To support his contention, Shri Desai has relied upon *M/s Sham Hotels Pvt. Ltd. v John Francis de Souza*, in Writ Petition no.30 of 2015. He has also contended that the petitioners have not laid any foundation for amending the pleadings. In this regard, Shri Desai points out that the petitioners, in fact, wanted to withdraw their earlier admissions.

8. Heard Shri G. Agni, the learned counsel for the petitioners, Shri S. Desai, the learned counsel for the respondent no.2, and Shri E. Usapkar, the learned counsel for the respondent no.1.

9. The facts are not disputed. If we examine the petitioners' application under Order 6 Rule 17 of CPC, it wants the written statement amended. That amendment wants the insertion of a

paragraph admitting the contents of paragraphs 22, 23, 24, 25,26 and 27 of the plaint. Besides, they wanted to substitute paragraph 11 with the following paragraph:

11. That the defendants nos.3 and 4 have no objection if the suit of the plaintiff is decreed.”

10. As I have already noted, the petitioners are the two of the five vendors, the remaining vendors being respondents 3 to 5 in this Writ petition. They have sold a part of their property to the first respondent and later another part to the second respondent. Initially, in their written statement they have denied all the plaint averments. Later, pending the trial, they would like to admit the plaintiff's case.

11. Let us assume that they have not applied for amendment of the written statement; instead, they get into the witness box and depose in the plaintiff's favour. What would be the evidentiary value of that deposition? At any rate, the parties cannot be prevented from admitting the case of the other parties, even after their placing the pleadings on record. Here, the same eventuality the petitioners wanted to happen a little prematurely. For that purpose, they have filed this amendment application.

12. Even under Order XII, Rule 1 of CPC, “any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.” The

process of admission has no temporal limitations; it can be at any stage. Here, the petitioners as the co-vendors now want to support the case of one purchaser, perhaps, to the prejudice of the other purchaser.

13. That said, I may hasten to add that once vendors have been divested of their title to and interest in the property, their deposition, if any, in a proceeding concerning that property may not be decisive. The dispute essentially needs to be resolved based on the documentary evidence. Under these circumstances, I must note that what now the petitioners intend to do—that is admit the plaintiffs’ case—has statutory sanction. So, the trial Court’s preventing them from amending their written statement is a futile exercise. We have already noted that the evidentiary value of the erstwhile vendor’s admission is a matter of adjudication.

14. In *M/s Sham Hotel Pvt. Ltd*, the plaintiff wanted to amend the pleading. In that context, the Court has observed that initially the plaintiff affirmed on oath as to the correction of the plea he has taken; later he wanted to dilute that plea without justification. I am afraid that proposition may not have any bearing on this case. This case is a simple case of admission which has a statutory support.

15. Under these circumstances, I allow this Writ Petition. As a result, the petitioners’ application for amendment stands allowed.

Nevertheless, I clarify, as a matter of abandon caution, that the petitioners' admitting case of the one of their purchasers is a matter of appreciation by the trial Court.

No order on costs.

DAMA SESHADRI NAIDU, J.

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