

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.1183 OF 2018**

Keshav Shambhu Palyekar &amp; Ors.

.... Petitioners

V/s

The Goa Tourism Development  
Corporation Ltd., through its  
Managing Director

.... Respondent

Shri A.D. Bhobe, Advocate for the Petitioners.

Shri Shivan Desai, Advocate for the Respondent.

**Coram:- DAMA SESHADRI NAIDU, J.****Date:- 20<sup>th</sup> January 2020****ORAL ORDER :**

The petitioners filed Special Civil Suit No.4/2007 against the respondent Corporation, before the Civil judge, Senior Division, Mapusa. It was in January 2007. The petitioners sought declaratory and injunctive relief. The declaration concerns the notice of eviction the Corporation issued to the petitioners; the injunction concerns the property said to be in petitioners' possession protected by a compound wall.

2. Initially, the Corporation applied under Order VII Rule 11 of CPC to non-suit the petitioners. Acting on that application, the trial Court rejected the plaint. Aggrieved, the petitioners appealed but could not succeed. Eventually, in the Second Appeal, this Court reversed the findings of the Courts below under Order VII Rule 11 and restored the suit.

3. When the petitioners' evidence was being recorded, they engaged a private surveyor and got the land in their possession surveyed. Then, they came to know that the land falls not only in the survey numbers they mentioned in the suit schedule, but also other survey numbers. Therefore, in October 2018, the petitioners applied for amendment of the plaint for incorporating the additional survey numbers. Besides, in the previous month, the petitioners filed another application to bring on record the surveyor's report as additional evidence. Through two separate orders, on 21.11.2018, the trial Court rejected both the applications. Aggrieved, the petitioners have filed this Writ petition.

4. Heard Shri A.D. Bhole, the learned counsel for the petitioners; and Shri Shivan Desai, the learned counsel for the respondent.

5. Both the learned counsel have elaborated on their respective cases as pleaded and argued before the trial Court. Because the record is explicit, their arguments need no replication or extraction.

6. The petitioners, as the plaintiffs, pleaded that they have been in possession of a particular piece of property surrounded by a compound wall. That fact accepted at least as a matter of pleading, we may assume that the land in the petitioners' possession is determinable. The petitioners' legitimacy to hold on to the property is a question of adjudication, though.

7. It is a well-established principle of practice that the physical features or, to be precise, the boundaries prevail over the survey numbers.

True, the trial Court has held that the land was earlier subjected to acquisition and, therefore, the petitioners must have been aware about which survey numbers cover their land. I am afraid, the question of correctness of the survey number and the legitimacy of the petitioners' possession are matters of merit to be gone into. It must be based on the documentary and oral evidence. An amendment, on the other hand, cannot be rejected prejudging what could be termed as the falsity of a plea or its inherent weakness.

8. I, therefore, hold that the petitioners can amend their pleadings, providing more particulars about the property in his possession. So long as they do not intend to change the identity of the property, the Corporation does not suffer any prejudice.

9. As to the application to bring on record the surveyor's report, I reckon, the trial Court's order is unexceptional. Admittedly, the petitioners engaged services of a private surveyor and secured a report. That report, trite to note, is a private document. If at all the petitioners want to rely on that document, they may, in the trial, examine the surveyor and get the document marked through him. Therefore, to that extent, I refuse to interfere with the trial Court's order.

In the manner indicated above, I dispose of the Writ Petition.

**DAMA SESHADRI NAIDU, J.**

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