

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.1047 OF 2019**

Maria Felicidade Amaltina
Mascarenhas & Ors.

... Petitioners

Versus

Joao Francisco Serrao @
John Francisco Serrao & Anr.

... Respondents

Shri Zeller De Sousa, Advocate for the Petitioners.
Shri A.D. Bhobe, Advocate for the Respondents.

Coram: DAMA SESHADRI NAIDU, J.

Date: 30th January 2020

ORAL ORDER:

The petitioner was a plaintiff in Regular Civil Suit No.301/2000 before the Civil Judge, Senior Division, Margao. The petitioner, as the plaintiff, sought a declaration and injunction. The trial Court partly decreed the suit. Aggrieved, the defendants filed Regular Civil Appeal No.62/2017 before the District Judge, South Goa, Margao.

2. In the First Appeal, the petitioners, as the respondents, applied under Order VI Rule 17 of CPC to have their plaint in the suit amended. Though the petitioners have sought the amendment on two counts, now they confine it to only one aspect. And to that extent alone, we will consider the case. As the record reveals, the appellate Court has dismissed the petitioners' application for amendment on the grounds that the application was barred by limitation. Aggrieved, the petitioners have filed this Writ Petition.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

4. The petitioners' counsel contends that the petitioners have inadvertently pleaded in the plaint "allegedly" wherever encroachment appears. He wants that expression "allegedly" removed so that the pleadings would read plain and simple. In response, the learned counsel insists that it is the plaintiff's very own pleading. He cannot be allowed to withdraw that expression belatedly, as rightly held by the trial Court.

5. Heard Shri Zeller De Souza, the learned counsel for the petitioners and Shri A.D. Bhobe, the learned counsel for the respondents.

6. Indeed, for reasons known to him, the petitioner has employed the expression "allegedly" wherever he mentioned the word "encroachment." Perhaps, he does not want to admit before the Court that there has already been any encroachment. Hence, he has hedged his assertions as allegation. Besides, it may have been by force of habit and as a matter of legalistic jargon, the party has employed that expression.

7. Either way, the expression conveys no sense in the context of the case, and I reckon neither party could be prejudiced even if that expression is not employed in the pleadings.

8. As a verb, to 'allege' is to claim or assert that someone has done something illegal or wrong, typically without proof. It is a reporting verb. *Oxford Dictionary of English* (2nd Ed., 2005) cites these examples: "[with clause] he alleged that he had been assaulted." Similarly, "[with obj. and

infinitive] he is alleged to have assaulted five men.” As an adjective, it is used attributively. That is, something said without proof to have taken place or to have a specified illegal or undesirable quality. For examples, the alleged conspirators. As an adverb, allegedly is a sentence adverb: “He was allegedly a leading participant in the coup attempt.” Oxford Dictionary of English traces its etymology and says it is from Middle English (in the sense ‘declare on oath’): from Old French *esligier*, based on Latin *lis*, *lit-* ‘lawsuit’; confused in sense with Latin *allegare* ‘allege’.

9. Ambrose Bierce, that stickler for strict usage, in his *Write It Right: A Little Blacklist of Literary Faults* (1909, available in the Public Domain) decries the expression "the alleged murderer." According to him, one can allege a murder, but not a murderer; a crime, but not a criminal. A man that is merely suspected of crime would not, in any case, be an alleged criminal, for an allegation is a definite and positive statement. In their tiresome addiction to this use of alleged, Ambrose Bierce continues, the newspapers, though having mainly in mind the danger of libel suits, can urge in further justification the lack of any other single word that exactly expresses their meaning; but the fact that a mud-puddle supplies the shortest route is not a compelling reason for walking through it. One can go around.

10. We may, finally, refer to Brian A Garner’s take on this ubiquitous legal expression, for he usually has the final word on any disputed usage

in modern legal parlance. In his *Modern English Usage* (4th Ed.), Oxford University Press, Garner says if the thing that is alleged has already been verified, then alleged is the wrong word. So the word is inappropriate when describing something that is known to have occurred. If the police believe that some particular person has committed a crime, that person is a genuine suspect, not an alleged one—e.g.: “The story goes that Pierce had a verbal beef a year ago with one of the three alleged suspects [read suspects], and, by chance, they crossed paths again.” Similarly, allegedly does not mean “in an alleged manner,” as it would if the adverb had been formed as English adverbs generally are. Wilson Follett considered adverbs like this one ugly and unjustified—especially reportedly. Yet allegedly is a convenient space-and time-saver, reasons Garner. Though not logically formed, allegedly is well established and, if used in moderation, unobjectionable.

11. Instead of going through the technicality of letting the petitioner amend the pleadings to remove that expression “allegedly”, I clarify that the appellate Court will consider the appeal on merits without reference to the expression “alleged” as I reckon that expression does not affect the merits of the case.

I, accordingly, dispose of the Writ Petition.

DAMA SESHADRI NAIDU, J.

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