

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No.99 OF 2020

Varca Sports Club,
represented thr.its General Secretary
Mr. Jimreeves Rodrigues e Rebello
and 2 Ors.

..... Appellants

V e r s u s

Aires D'costa @ Ayres Genesio Jose
Estevam Da Costa, thr. his POA,
Arjun D'Costa and 40 ors.

..... Respondents

Mr. Cleofato Coutinho Almeida, Advocate for the Petitioners.

Ms. Analiz Maria Menezes, Advocate for the Respondent No.1.

CORAM : M. S. SONAK, J

DATE : 22nd June, 2021

ORAL ORDER:

Heard Mr. Cleofato Coutinho Almeida, learned Counsel for the petitioners and Ms. Analiz Maria Menezes, learned Counsel for the respondent No.1.

2. The challenge in this petition is to the order dated 14.11.2019

by which the learned Trial Court has granted leave to the respondent no.1 (original plaintiff) to amend the plaint in Civil Suit No.22/2014/FTC-I.

3. Mr. Coutinho, learned Counsel for the petitioner submits that in the plaint, the suit property had been described with a particular name and under No.41253. He points out that even the boundaries to the suit property were set out in clear terms in paragraph 2 of the plaint. He points out that the details of devolution of title were also set out in the plaint. He submits that after the petitioners filed their written statements in the year 2014 itself, after a period of almost 5 years, the application was filed to amend the plaint and to fundamentally change its nature.

5. Mr. Coutinho, learned Counsel submitted that the amendment proposed to change the name of the property, its registration number as well as the boundaries of at least 3 sides. He points out that even the details as to devolution pleaded in the original plaint have been given a go by and an entirely new case is sought to be set out by seeking leave to amend the plaint. He submits that there is no explanation whatsoever for the delay involved and, besides, this is a case where the very foundation of the original suit is being displaced. He submits that the learned Trial Judge exceeded jurisdiction in allowing the amendment of this nature.

6. Ms. Analiz Menezes, the learned Counsel for the respondent

No.1 points out that this was, at the highest, a case of misdescription and by means of amendment, correct description is now been stated in the plaint. She points out that the survey number, which is most crucial in such matters, was correctly described in the original plaint and the same has not been subjected to any amendment. She pointed out that this is a case of pre-trial amendment, since, evidence was yet to commence in the matter. She submits that there is no error of jurisdiction and this petition may therefore not be entertained.

7. The rival contentions now fall for my determination. On perusing the material on record and on due consideration of the rival contentions, I am satisfied that the learned Trial Judge, in making the impugned order, has not exceeded the jurisdiction vested in him to warrant interference under Article 227 of the Constitution of India.

8. In the first place, as was rightly pointed out by Ms. Menezes, learned Counsel, the application seeking leave to amend was made before the trial in the suit could commence. Generally, where leave is sought to amend the application prior to the commencement of the trial, the Courts are liberal and the party seeking such leave is not non-suited on the ground of mere delay.

9. Secondly, this is really a case of misdescription of the suit

property in the plaint. No doubt, this defect was pointed out by the petitioners by filing their written statements in the year 2014 itself. The amendment proceeds on the basis that there was such error of misdescription and, therefore, leave was sought to place the correct description in the plaint. Significantly, the survey number indicated in the original plaint remains the same. The suit was for declaration, injunction and recovery of possession. The nature of the suit also remains the same. Therefore, it is not possible to accept Mr. Coutinho's contention that the amendment displaces the original cause of action or that the amendment brings about fundamental change in the nature of the suit and, therefore, such amendment ought not to have been allowed by the learned Trial Judge.

10. In ***Ganesh Trading Co v/s Moji Ram***¹, the Hon'ble Supreme Court has held that the main rules of pleadings in Order 6 of CPC show that the provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued. It is true that, if a

1 (1978) 2 SCC 91

plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time. But, mere failure to set out even an essential fact does not, by itself, constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could sometimes be viewed as equivalent to an introduction of a new cause of action which, cured of its short-comings, has really become a good cause of action. This, however, is not the only possible interpretation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured so as to constitute a cause of action where there was none, provided necessary conditions, such as payment of either any additional court fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of

pleadings.

11. In this case, as was pointed out, the cause of action as pleaded in the original suit has not changed. This was a case of mere misdescription or, rather, defective description of the suit property. Even the survey number of the suit property as stated in the original plaint continues to remain the same. Merely because the correct registration number or the name as now sought to be stated or merely because the boundaries are now sought to be corrected, does not mean that the attempt is to introduce an entirely new cause of action or to displace the earlier cause of action.

12. Therefore, applying the principles laid down in ***Ganesh Trading*** (supra), and also having regard to the fact that this was a pre-trial amendment, it is difficult to hold that the learned Trial Judge exceeded jurisdiction in granting leave to amend the plaint. Necessary costs have also been imposed on the original plaintiff.

13. For all the aforesaid reasons, there is no case made out to entertain the present petition. This petition is dismissed.

14. There shall be no order as to costs.

M. S. SONAK, J.

msr.