

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.150 OF 2020****DR. RAJENDRA TAMBA****.... PETITIONER****Versus****MADHU RAUJI PARSEKAR & 15 ORS.****.... RESPONDENTS**

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

Shri Sanman R. Keny, Advocate under Legal Aid Scheme for the Respondent No.5.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 8 MARCH 2021****ORAL ORDER:**

The respondent nos.1 to 6 are the plaintiffs in Regular Civil Suit No.16/2011/B before the Civil Judge, Junior Division, 'B' Court, Quepem. They sued for declaration and certain consequential reliefs. As the suit was filed in July 2010, the petitioner, as one of the defendants, filed his written statement in August 2011. The trial Court framed the issues in August 2012 and later additional issues in July 2017.

2. When the trial Court began and the plaintiff no.1 was in the witness box, on 22.01.2020, the plaintiffs applied for amending the pleadings. They wanted to incorporate an additional prayer: recovery of possession. On the very same day, the petitioner, as the first defendant, filed the reply opposing the amendment. Eventually, through an order, dated 07.02.2020, the trial Court allowed the amendment application. Aggrieved, the petitioner has filed this Writ Petition under Article 227 of the Constitution of India.

3. Shri A.D. Bhobe, the learned counsel for the petitioner, has submitted that the suit has been pending for over a decade and the respondents have very much known they did not have the possession of the property. Despite that, all these years they have not sought the relief

of recovery of possession. Even otherwise, the respondents have supplied no justifiable reason why the trial Court should allow them to amend the pleadings belatedly. In this context, after taking me through Order 6 Rule 17 of CPC, Shri Bhobe has addressed that the proviso to Rule 17 mandates that the parties must have displayed due diligence in conducting the case, and despite that diligence, he must have been disabled from seeking the amendment at the earliest. To support his contentions, he has relied on this Court's judgment, dated 04.03.2020, in Writ Petition No.1064/2019. In the end, Shri Bhobe has pointed out that the trial Court's order allowing amendment is cryptic and contains no reference to due diligence, nor has it supported the conclusion with any elaborate reasons.

4. On the other hand, Shri S. Keny, the learned counsel for the fifth respondent, having been appointed by this Court on legal aid, has submitted that the judgment the petitioner has relied on clearly differs on facts. According to him, by the application for amendment, the respondent nos.1 to 6 did not plead sufficient cause. To elaborate, Shri Keny has submitted that uninitiated into legal intricacies, the respondents trusted their previous counsel and expected him to plead about recovery of possession. It was so because they never pleaded in the first place that they had been in possession of the property. Only when they changed the counsel and went through the papers, did they realise that the previous counsel did not seek the relief of recovery of possession. Shri S. Keny further stresses that a mere declaration without the further consequential relief of recovery of possession is fatal. At any rate, as the amendment is within limitation, it only serves the substantial cause of justice.

5. Heard Shri A.D. Bhobe, the learned counsel for the petitioner, and Shri S. Keny, the learned counsel appointed under the Legal Aid Scheme for the respondent no.5

6. Indeed, this Writ Petition under Article 227 of the Constitution of India concerns the amendment of the pleadings in the plaint. That

amendment is to seek an additional relief of recovery of possession. Undeniably, the amendment was sought rather belatedly. That said, the trial Court, through a brief order, has observed that as the amendment was sought within limitation, it ought to be allowed. Indeed, as strenuously contended by Shri Bhobe the trial Court did not address the issue of due diligence as Rule 17 of Order 6 mandates. When we go through the plaint, as it was filed for declaration, the plaintiff also wanted the trial Court to restrain the defendants from raising any construction. By implication, I reckon, the plaintiffs did admit that they had not been in possession of the property, but they have not expressly sought any relief of recovery of possession.

7. Then, the trial Court has exercised its discretion and held that the amendment be allowed. It is trite to observe that proceedings under Article 227 of Constitution of India only allow this Court to exercise its supervisory jurisdiction rather than any appellate jurisdiction. Unless the discretion exercised by the trial Court is perverse or causes any failure of justice, the judicial intervention in the Writ Petition ought to be avoided.

I, therefore, decline to interfere with the trial Court's order, dated 07.02.2020, allowing the amendment application. That said, I clarify, that it is open for the parties to plead and to prove, during the trial, any question of limitation on the relief of recovery of possession.

DAMA SESHADRI NAIDU, J.

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