

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 97 OF 2012

1. Mr. ISAAC DA COSTA, son of Antonio P. L. Da Costa, major in age, service; and his wife

2. Mrs. SYLVIA DA COSTA,
major in age, housewife,
residents of 18, Paradise Apartments, 3rd
floor, Caesar Road,
Ambolim, Andhery (W),
Mumbai - 58.
Presently residing at House No.209(2),
Cavelossim, Salecete, Goa.

3. Mr. ROSARIO MANUEL DA COSTA;

4. Mrs. LUDOVINA ESPERANCA PO;

5. Mrs. IGNACINA ROSALINA PETLIN
PEREIRA;

6. Mrs. BRIMILDA BIBIANA VIEGAS;

7. Mr. JOAO MIGUEL DA COSTA;

8. Mrs. FILOMENA DA COSTA;

All above parties reside at 18, Paradise
Apartments, 3rd floor, Caesar Road,

Ambolim, Andheri (W), Mumbai - 58:

9. Mrs. SANTANA ANTONIO DA
COSTA, wife of Patrick Da Costa,
aged 80 years, married, housewife, resident
of House No.209(2),
Cavellossim, Salcete, Goa.

The above parties are herein represented by
their duly constituted attorney Mr. Isaac
Paul Da Costa, son of Patrick Da Costa,
major in age, married, service, resident of
House No.209(2), Cavellossim, Salcete, Goa. ... Appellants.

Versus

Mr. Lourdes Rodrigues,
son of Jose Rodrigues,
major in age, married, service,
resident of House No.165,
Rodrigueswaddo, Cavellossim,
Salcete, Goa.Respondent.

Mr. J.J. Mulgaonkar, with Ms. Rupa Benaulikar,
Advocates for the appellants.

Mr. Cleofato Almeida Coutinho, Advocate for the
respondent.

CORAM : M. S. SONAK, J.

DATED : 30th September 2021

ORAL JUDGMENT :-

1. Heard Mr. J.J. Mulgaonkar for the appellants and Mr. Cleofato Almeida Coutinho for the respondent.

2. This appeal is directed against the order dated 5th May, 2012, by which the learned Trial Judge has rejected the plaint by resorting to the provisions of Order 7, Rule 11 of the Code of Civil Procedure (CPC). Since, in terms of the CPC such an order rejecting the plaint is deemed to be a decree, this appeal has been instituted.

3. Mr. J.J. Mulgaonkar, the learned Counsel for the appellants submits that rejection is based on two grounds, both of which are not legally sustainable. He submits that in the first place, the Court held that some amendments were carried out to the plaint even though the application seeking leave to amend was pending and no leave had been granted. Secondly, he submits that there was no under-valuation and, in any case, the maximum Court Fee of ₹ 15,000/- had already been paid. On the first aspect, he submits that there was an error on the part of the Advocate who

was appearing in the matter and the explanation may be considered.

4. Mr. Coutinho, the learned Counsel for the respondent defends the impugned order based on the reasoning reflected therein. He submits that no amendments could have been carried out to the plaint without any leave being granted by the Court. He submits that such amendments ought not to be considered and have rightly not been considered by the Trial Court.

5. The rival contentions now for my determination.

6. The ground that some unauthorised amendments were carried out to the plaint, cannot be the basis for rejecting the plaint under Order 7, Rule 11 of the CPC. This is, by no means, to defend the party or its Advocate who carried out the amendments in the Court record, without their being a specific order permitting the same. However, the explanation now submitted by Mr. Mulgaonkar that the Advocate who actually carried out the amendments, had no any mala fide intentions, but perhaps, as a result of some over enthusiasm, carried out the

amendments, is hereby accepted. The amendments, however, will have to be struck off from the record, for the present. The pending application will have to be considered by the Court and only if leave is granted then the amendment be ultimately carried out.

7. On the aspect of under-valuation, the findings of the Court are, by no means, clear. In any case, even if the Court were to come to the conclusion that the reliefs have been under-valued, an opportunity was required to be given to the plaintiffs to make the correct valuation within the time to be fixed by the Court. It is only if the plaintiffs were to fail or refuse to carry out the correct valuation, the plaint could have been rejected by resort to the provisions of Order 7, Rule 11 of the CPC. Since, this has not been done, the impugned order deserves to be set aside.

8. For the aforesaid reasons, the impugned order is set aside. However, the application under Order 7, Rule 11 of the CPC made by the defendant is restored to the file of the learned Trial Judge. Such application will have to be reconsidered in accord

with law and on its own merits, as expeditiously as possible. All contentions of all parties are expressly left open.

9. The appeal is allowed in the aforesaid terms. There shall be no order as to costs.

10. The parties to now appear before the Trial Court on 25th October, 2021 at 10.00 a.m. and file a certified copy of this order.

M. S. SONAK, J.

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