

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.985 OF 2017

1. Nitin B. Gadekar,
Son of Shri Balkrishna @
Bala Gadekar, aged 53 years,
Indian National,
service, married,
2. Netra Nitin Gadekar,
wife of the Petitioner No.1,
aged 43 years,
service, married,
Indian National,
Both temporary residents
of Flat No.702, 7th Floor,
Saishrishti Apartment,
Opposite Dream Land Park,
near Ambar Plaza Hall,
Vijaypark Road, Mira Road,
Thane – 401 107
residents of House No.357/C,
Oshelbag, Dhargal, Pernem Goa. ... Petitioners

Versus

1. Shri Bapu Shabi Gadekar,
son of late Shabi Bapu
Gadekar, age 67 years,
married, agriculturist,
2. Smt. Sraswati Bapu Gadekar,
wife of the Respondent No.1,
aged 58 years, housewife,
3. Shri Tukaram Shabi Gadekar,
son of late Shabi Bapu Gadekar,

aged 58 years, married,
mechanic,

4. Smt. Tasvita Tukaram Gadekar,
wife of the Respondent No.3,
aged 58 years, housewife,
All are Indian Nationals and
residents of House No.357,
Uxelbag, Dhargal,
Pernem Goa.
5. Shri Shivaji Zoswantarao Dessai,
son of late Vamanji Zoswantrao Dessai,
major, married, landlord,
Indian National,
6. Smt. Ahilya Shivaji Dessai,
wife of the Respondent No.5,
major, landlady, Indian National,
Both residents of House No.90,
Arabo, Dhargal, Pernem, Goa.
7. Shri Ramaji Zoswantrao Dessai,
son of late Vamanji Zoswantarao
Dessai, major, married,
landlord, Indian National
(Since deceased)
7A) Mrs. Rupali B. Prabhu Misquin,
d/o Ramaji Zoswantrao Dessai,
major of age, and her husband,
7B) Shri Balkrishna Misquin,
major of age,
Both r/o H.No.923/186,
Near Village Panchayat Socoor,
Alto Porvorim Goa 409 501,
7C) Mrs. Shraddha M. Adarkar,

d/o Ramaji Zoswantrao Dessai,
 major of age, and her husband,
 7D) Shri Milind Adaekar,
 major of age,
 Both r/o 601, Bldg. No.23,
 Kalpavruksha Garden Co-op. Hsg. Society,
 Dhokali RD, Yashaswi Nagar,
 Opp. Highland Residency,
 Thane (WEST) 400607
 7E) Mrs. Shweta M. Bedekar,
 d/o Ramaji Zoswantrao Dessai,
 major of age, and her husband,
 7F) Shri Mandar Bedekar, major of age,
 Both R/o B3/301,
 Rutu Estate, Patlipada,
 Near Commissioner Bunglow,
 Sandozbaug, Thane (WEST) 400607

8. Smt. Supriya Ramaji Dessai,
 wife of the Respondent No.7,
 major, landlady, Indian National,
 Both residents of House No.90, Arabo,
 Dhargal, Pernem Goa.
9. Shri Raghunathji Zoswantrao Dessai,
 son of late Vamanji Zoswantrao Dessai,
 major, married, landlord, Indian National,
 (Deleted as per order dated 20.12.17)
10. Shri Laxmanji Zoswantrao Dessai,
 son of late Vamanji Zoswantrao Dessai,
 major, married, landlord, Indian National,
11. Smt. Suvaran Laxmanji Dessai,
 wife of the Respondent No.10,
 major, landlady, Indian National,
 Both residents of House No.90,
 Arabo, Dhargal, Pernem Goa. ... Respondents

Mr. P. Sawant, Advocate for the Petitioners.

Mr. Guru Shirodkar, Advocate for Respondent Nos. 1 to 4.

Coram : M. S. SONAK, J

Date : 16th February, 2021

ORAL JUDGMENT

Heard Mr. P. Sawant, learned counsel for the Petitioners and Mr. Guru Shirodkar, learned counsel for Respondent Nos.1 to 4, who are contesting Respondents.

2. Mr. Sawant states that even the remaining Respondents are served in this matter.

3. Accordingly, Rule.

4. Rule is made returnable forthwith at the request and with the consent of the learned counsel for the Petitioners and the contesting Respondents.

5. The challenge in this petition is to the order dated 12th September, 2017 by which the learned Trial Judge has partly allowed and partly dismissed the Petitioners' application for leave to amend the plaint.

6. The learned Trial Judge has held that part of the amendment which is now rejected relates to the property which is different and distinct from the property described as a subject matter of the suit. In so far as the amendment relates to subject matter of the suit as originally filed, the same has been allowed by the Trial Judge. Mr. Sawant however points out that even in so far as this part is concerned, only leave has been granted to correct the clerical errors which have cropped up in the plaint.

7. Mr. Shirodkar defends the impugned order based on the reasoning reflected therein. He pointed out that this amendment is not at all necessary for effective decision in the suit. He points out that if the amendment is allowed it will lead to multifariousness. He points out that the entire nature and the complexion of the suit will change if the amendments are allowed and all these are valid consideration for denial of leave to carry out amendment.

8. If now the impugned order is perused, it is true that the learned Trial Judge in paragraphs 23 to 28 has relied upon several decisions on the subject of amendment. However, most of the decisions refer to the leave being sought after the commencement of the trial. In the present case, the record indicates that the trial is yet to commence and therefore most of these decisions will not apply.

9. Although it is true that the portion of amendment which is now rejected pertains to some other property than what was originally referred to in the plaint. The record bears out that the dispute is between the same parties. The nature of the dispute namely that such property was acquired by playing a fraud also remains the same. Even Mr. Shirodkar agreed that a separate suit would always be maintainable in such circumstances.

10. In one of the decisions relied upon by the Trial Judge i.e. ***Sampath Kumar Vs Ayyakannu and Another¹***, it is held that where the proposed amendment does not alter basic structure of the suit and same can always be allowed to curtail multiplicity of the legal proceedings. Proviso to Order 6 Rule 17 of CPC does not apply in this matter because the trial is yet to commence.

11. Therefore, there was no good reason not to allow the Petitioners to amend the suit in terms of application taken out by the Petitioners. No doubt, this would occasion some inconvenience to the Respondent Nos. 1 to 4. However, this is inconvenience which could always be compensated by award of costs. By allowing amendment, clearly, the multiplicity of the legal proceedings will be avoided. Allowing the amendment will not alter the basic structure of the suit though, the suit might now involve an additional property.

¹ AIR 2002 SC 3369

12. Similarly, there was no good reason not to allow the Petitioners to produce additional documents on record. The documents have a nexus with the proposed amendment and if the amendments are to be allowed, then, there is no good reason to shut out the documents no doubt, by leaving all defences of the defendants open.

13. Similarly, merely because the amendment is to be allowed that does not mean that legal or factual defences which are open to the defendants are being shut out. Such defences are indeed kept open and this position is made clear.

14. For all the aforesaid reasons, the impugned order to the extent it denies leave to the Petitioners to amend their plaint or to produce additional documents is hereby set aside. The Petitioners' application seeking leave to amend and produce documents is allowed in its entirety. Amendment will have to be carried out within four weeks from today and copies of the amended plaint and additional documents will have to be supplied to all the defendants. The defendants will also have liberty to file additional written statement within the time to be fixed by the learned Trial Judge in this matter.

15. The aforesaid relief is subject to the Petitioners paying to the Respondent Nos. 1 to 4 herein the costs of Rs.10,000/- within a period of four weeks from today. The costs may either be paid to the

Respondent Nos. 1 to 4 directly or deposited in the trial Court from where the Respondent Nos. 1 to 4 will be entitled to withdraw the same. The payment of costs is a condition precedent.

16. Rule is made absolute in the aforesaid terms.

17. Interim relief is vacated and the parties to now appear before the Trial Court on 9th March, 2021 and produce authenticated copy of this order.

18. All concerned to act based on the authenticated copy of this order.

M. S. SONAK, J

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TARI AMRUT
NAGESH

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