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**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.10 OF 2019.**

MARY M. CARVALHO E PEREIRA., VS VIMAL CARVALHO AND 11 ORS.,	... Petitioner. ... Respondents.
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Mr. J. Lobo, Advocates for the Petitioner.
Mr. A. F. Diniz, Senior Advocate with Mr. R. Menezes,
Advocate for the respondent nos. 9 and 10.

**CORAM: MANISH PITALE, J.
DATED: 27th November, 2021.**

P.C.:

By this petition, the petitioner (original plaintiff) has challenged order dated 12.10.2018, passed by the Court of Ad-hoc Ist Additional Senior Civil Judge, Margao (hereinafter referred to as the trial Court), whereby an application for amendment of plaint has been rejected.

2. This Court, while issuing notice in the present Writ Petition on 10.1.2019, granted ad-interim stay whereby the proceedings in the suit have remained stayed.

3. In the present case, the respondent no.11 herein filed a suit for cancellation of Will, mandatory injunction and other consequential reliefs, claiming that Will dated 17.5.2001 executed by the deceased original defendant no.1 was liable to

be cancelled as being null and void for the reason that it was allegedly got executed under the influence of original defendant no.2, through misrepresentation, influence, and manipulation. It is an admitted position that the trial is yet to begin. The records also show that the petitioner before this Court, was originally arrayed as defendant no.1(a), being one of the legal representatives of the original defendant no.1. The written statement came to be filed on behalf of all the legal representatives of the original defendant no.1, including the petitioner herein, whereby the contents of the plaint were admitted and it was prayed that the suit be decreed. It is also an admitted position that thereafter an application for transposition of the petitioner as plaintiff was moved, which was allowed and said order was never challenged. As a consequence, the petitioner is plaintiff no.2 before the trial Court.

4. At this stage, the petitioner moved an application proposing amendments in the plaint. It was claimed that the amendments were elucidatory in nature, on the basis of pleadings already in the plaint, and at few places certain typographical errors were sought to be rectified.

5. By the impugned order, the trial Court held that since

the petitioner had not affirmed the contents of the plaint after being transposed, she did not have locus to maintain the application for amendment of pleadings and even on merits it was found that since the fact of misrepresentation was missing in the original plaint, the proposed amendments could not be granted.

6. Mr. Lobo, learned counsel appearing for the petitioner invited the attention of this Court to the pleadings in the plaint as they stand and the proposed amendments. It was submitted that if the thrust of the plaint is appreciated in the correct perspective, it becomes clear that the proposed amendments ought to have been granted, being elucidatory in nature. It was submitted that therefore, the Court below erred in dismissing the application, particularly when the trial is yet to begin.

7. On the other hand, Mr. A. F Diniz, learned Senior Counsel appearing for the contesting respondents submitted that the trial Court was justified in holding that the petitioner did not have any locus to amend the plaint, for the reason that only the petitioner before this Court had applied for amendment of the pleadings, without consent of the original plaintiff no.1. On this basis, it was submitted that the present

petition deserved to be dismissed.

8. In the present case, it is an admitted position that as of today the petitioner is plaintiff no.2 in the suit pending before the trial Court. The order whereby the petitioner was transposed as the plaintiff no.2 was never made subject matter of challenge.

9. In this backdrop, when the contentions raised on behalf of the contesting respondents are considered, this Court is of the opinion that merely because the petitioner alone has filed the application proposing amendment of the plaint, it cannot be said that the pleadings could not be amended. The contention that the plaintiff no.1 had not consented to the amendments cannot be accepted for the reason that once the petitioner has been transposed as plaintiff no. 2 and the plaintiff no.1 nowhere objected to the proposed amendments, locus of the petitioner to seek proposed amendments cannot be challenged. Therefore, the said contention is unacceptable.

10. In so far as the merits of the matter are concerned, a bare perusal of the plaint would show that the Will in question has been challenged in an elaborate manner by pleading that the original defendant no.2 influenced and manipulated the deceased defendant and that the defendant

no. 2 intentionally played fraud on her when the Will was executed.

11. Paragraph (7) of the plaint specifically refers to misrepresentation of facts by defendant no.2 while ensuring that Will was executed by the deceased defendant in favour of the defendant no. 2.

12. In this backdrop, when the proposed amendment is perused, it becomes clear that the petitioner only seeks to elaborate the pleadings already on record. In some places, the petitioner has sought to rectify the typographical errors in the context of the documents already on record. Therefore, it cannot be said that either the nature of the suit is sought to be changed or that pleadings completely foreign to the plaint are sought to be introduced by way of amendment.

13. Perusal of the impugned order shows that the trial Court has committed an error in holding that there are no facts regarding misrepresentation in the original plaint and that therefore, the proposed amendments could not be granted. This is found to be factually incorrect on perusal of the original plaint, particularly paragraph (7) thereof. The trial Court has also erroneously held that the petitioner, who was original defendant no.1(a) had filed only a single line

Written Statement admitting the claim of the original plaintiff and giving no objection for decreeing the suit. The written statement of all the legal representatives of the original defendant no.1, including the petitioner before this Court, shows that elaborate statements were made in the written statement while praying that the suit may be decreed in terms of the prayer. This further demonstrates that the trial Court has committed an error while dismissing the application for amendment of the plaint, particularly when it is before the commencement of trial.

14. In view of the above, Writ Petition is allowed and the impugned order is quashed and set aside. The application for amendment at Exh. D-48 filed by the petitioner is allowed, in terms of the prayer made therein. Consequential amendments to be carried out before the trial Court within a period of two weeks from today.

15. Writ Petition stands disposed of accordingly.

MANISH PITALE, J.