

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 233 OF 2019

ROSALINA FURTADO @ E FERNANDES
AND 2 ORS.,

...PETITIONERS

Versus

SHAIKH ABDUL RAHIM AND 10 ORS.,

...RESPONDENTS

Mr. Jagannath Jayant Mulgaonkar, Advocate *for the*
Petitioners.

CORAM: MANISH PITALE, J.

DATED: 25th January 2022.

P.C.:

1. By this Writ Petition, the petitioners have challenged order dated 07.12.2018, passed by the Court of Civil Judge Junior Division, 'B' Court, Quepem, whereby the application for amendment (Exhibit D-35), filed on behalf of the petitioners i.e. original plaintiffs stood rejected.

2. The petitioners have filed a suit for declaration and injunction, whereby they have claimed a declaration as lawful owners in possession of the suit property and also, permanent

injunction to restrain the defendants from obstructing the petitioners from peaceful enjoyment of the suit property.

3. In the said suit, the petitioners moved an application for permission to withdraw the suit in order to file a fresh suit. By order dated 05.02.2016, the said application was rejected, with an observation that the petitioners could move an appropriate application for amendment of plaint to further clarify their exclusive possession in respect of the suit property.

4. Thereafter, the petitioners moved an application for amendment seeking deletion of paragraphs 4 to 12 from the plaint and instead, addition of paragraphs 4 to 8.

5. By the impugned order, the application has been dismissed, primarily on the ground that the petitioners were seeking to withdraw certain admissions made in the plaint.

6. Mr. Mulgaonkar, learned Counsel appearing for the petitioners submits that the aforesaid Court has committed an error in rejecting the application for amendment. There is no reference made to the earlier order dated 05.02.2016, whereby the application for withdrawal of the suit was rejected. It is further submitted that a perusal of the proposed amendment to the plaint would show that the petitioners only desire to clarify

their pleadings by seeking deletion of paragraphs 4 to 12 and instead, addition of paragraphs 4 to 8. It is further pointed out that the trial is yet to be commenced, therefore, there should be no impediment for granting the amendment application.

7. The respondents were served with notice issued by this Court. Despite several opportunities to the respondents, they chose not to appear before this Court. This Petition was adjourned on a number of occasions in order to grant opportunity to the respondents, however, they chose not to appear.

8. By order dated 05.02.2016, the earlier application filed on behalf of the petitioners for withdrawal of the suit with liberty to file a fresh suit was rejected. There was a specific observation made therein, that the petitioners could move an application for amendment. It is, therefore, that the petitioners moved an application for seeking deletion of paragraphs 4 to 12 from the plaint and instead, to add paragraphs 4 to 8. This Court has perused the original plaint and also the proposed amendment. Since the aforesaid Court, in the impugned order, has observed that the petitioners are seeking to withdraw certain admissions made in the original plaint, the contents of the original plaint, as also, the proposed amendment were carefully perused. This

Court observes that the contents of the original plaint at paragraphs 5 to 12 do not appear to give significant admissions, of which, the petitioners are seeking withdrawal. A perusal of the proposed amendment by way of addition of paragraphs 4 to 8 does show that the petitioners wish to state pleadings in order to clarify their claim of ownership and possession in the suit property. In such circumstance, this Court is of the opinion that the impugned order deserves interference. Accordingly, the Writ Petition is allowed. The impugned order is quashed and set aside. The application for amendment filed on behalf of the petitioners at Exhibit D-35 is partly allowed. The petitioners are permitted to delete paragraphs 5 to 12 from the original plaint. The proposed paragraphs are permitted to be inserted as paragraphs 5 to 9. Consequently, the further existing paragraphs of the plaint shall stand renumbered as paragraph 10 onwards.

9. The amendment to be carried out within four weeks from today. Writ Petition stands disposed of.

MANISH PITALE, J.