

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.90 OF 2022

WITH

WRIT PETITION NO.91 OF 2022

GOA UNIVERSITY THR. REGISTRAR,

VISHNU S. NADKARNI

... Petitioner

Versus

HAROON IBRAHIM AND 2 ORS.

... Respondents

Ms. Ashwini Agni, Senior Advocate with Ms. Jay Sawaikar,
Advocate for the Petitioner.

Mr. A.D. Bhobe with Ms. Annelise Fernandes, Advocates *for*
Respondent No.1.

Mr. Shivdatt Munj, Additional Government Advocate *for*
Respondent Nos.2 and 3.

CORAM. A.K. MENON, J

DATED: 11th April, 2022

ORAL ORDER.

1. Considering the issues involved, the Counsel appearing for the parties agreed that the matters may be disposed finally and hence, by this common order, disposes both these writ petitions. Accordingly, I

issue Rule returnable forthwith. The petitions are taken up for final hearing and disposal, by consent.

2. The challenge in these petitions is to two orders both dated 17.02.2022 whereby the Trial Court rejected two applications seeking amendment of the written statement of the University which is Defendant No.1 in the Trial Court in a suit claiming easementary rights being Civil Suit No.53/2012 claiming declaration and permanent injunction and consequential reliefs. The Petitioner had already filed its written statement and issues have been framed.

3. Since the Respondent/Original Plaintiff has been claiming uninterrupted and peaceful access through the suit property which the Petitioner-University claims is owned by it, the University sought leave to amend the written statement to incorporate proposed paragraphs 27a to 27g in order to bring on record the University's contention that the Respondent No.1-Original Plaintiff demolished a wall which the University had constructed prior to the suit being filed.

4. The Trial Court, after hearing the parties, dismissed the applications for amendment while observing that the aforesaid facts sought to be incorporated in the written statement were not relevant for purposes of deciding issues in the suit.

5. A further amendment was sought to be incorporated in paras 27-I to 27-M. This amendment application was to introduce the Petitioner's contention that the Defendant after demolition of the wall had parked a vehicle in a manner such that the compound wall could not be reconstructed. This aspect also, in my view, is a matter of evidence. The altered status of the land and the wall is not necessary to be introduced by way of amendment and to that extent, the impugned orders cannot be faulted.

6. The main issue is whether the Plaintiff proves that he had acquired right to pass through the University's property. Whether or not the compound wall was partly demolished by the plaintiff is a matter of evidence, since the Petitioner had already contended and averred that the compound wall is existing prior to the civil suit having been filed. To that extent, the application for amendment was not necessitated.

7. In my view, it would be appropriate that all subsequent developments can be introduced by way of evidence to be led by the Petitioner- University. No doubt, the Respondents-Original Plaintiffs would have an opportunity of cross examining the Petitioners'

witnesses. With this observation, both the petitions are disposed. Rule made absolute in the above terms.

8. At this stage, Ms. Agni states that she has instructions to apply for recasting issues. It will be open for the Petitioner to make an appropriate application before the Trial Court to recast issues to bring into focus the real controversy in the suit between the parties. Application, if any, for recasting issues to be made within two weeks from today. If an application is so made, the Trial Court shall dispose of the same without being influenced by this order.

9. All contentions on merits are left open.

A.K. MENON, J.

JOSE FRANCISCO
DSOUZA

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