

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 303 OF 2019.

COLIN JOSEPH MASCARENHAS
(DEC) AND ANR., ...Petitioners.
VS
FR. JOSE ANTONIO MINGUEL
EMITEIRO MASCARENHAS AND 3 ...Respondents.
ORS.,,,

Mr. R. Bras Desa and Ms. G. Fernandes, Advocates for the petitioners.

Mr. V. Menezes and Ms. S. Narvekar, Advocates for the respondent no.2.

CORAM: M. S. SONAK, J.

Date: 9th June, 2022

P.C.

Heard Mr. R. Bras Desa, learned Counsel for the petitioner, and Mr. V. Menezes, learned Counsel for the respondent no.2(the present plaintiff in the suit)

2. The challenge in this petition is to the order dated 17.12.2018, by which the learned Civil Judge, Junior Division 'E' Court at Margao has allowed Exh. D-94. This exhibit was an application made by the present plaintiff seeking leave to amend the plaint.

3. Mr. Desa submits that there was a serious issue of limitation involved and this aspect has not even been considered by the learned Trial Judge. He submits that the present plaintiff seeks to plead his independent cause of action i.e ex facie barred by limitation. He submits that the issue as to whether limitation commences from the date of amendment or from the date of the original suit was raised but not has been decided by the learned Trial Judge. He submits that the present plaintiff seeks to pitch his case higher than that which was pleaded by the original plaintiff, in whose place the present plaintiff has been substituted.

4. Mr. Desa submits that all this is impermissible. The impugned order, to the extent it does not even consider these aspects, is vulnerable and liable to be set aside.

5. Mr. Menezes, defends the impugned order based on the reasoning reflected therein. He submits that no additional facts have been brought in by way of amendment. Amendment was mainly clarificatory in nature to explain the nexus of the present plaintiff with the property in question and the cause of action as has been pleaded. He submits that the issue now raised by Mr. Desa can always be kept open but based on such an issue, no case is made out to revoke the leave to amend the plaint.

6. Having considered the rival contentions and perused the material on record including the particulars of the application Exh.D94, while no case is made out to interfere with the impugned order, a case is certainly made out to clarify the impugned order so that the petitioner is not precluded from raising all the issues now flagged by Mr. Desa in this Court.

7. Merely because leave to amend may have been granted, the same does not preclude the petitioner for that matter or for any other defendants in that matter in urging that the suit as amended or even otherwise is barred by limitation. Similarly, the petitioner, for that matter any defendants in the suit, can always urge that the plaintiff cannot pitch his case higher than what was pleaded by the original plaintiff. Such objections are always open and since the impugned order does not clarify this aspect, the same is now clarified.

8. Accordingly, the impugned order is not interfered with. However, all objections permissible in law on merits or issues of the limitation are expressly kept open. This would include issues now flagged by Mr. Desa in this Court.

9. All Contentions of all the parties regarding such issues are expressly kept open.

10. With the aforesaid clarification, this petition is disposed of
There shall be no order as to costs.

11. Interim order staying further proceedings in the suit is
hereby vacated.

M. S. SONAK, J.