

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.194 OF 2021

CASSIANO J M PEREIRA

AND 3 ORS

...Petitioners.

VS

ISIDORIO FRUTADO AND 2

ORS

...Respondents

Mr. T. Sequeira, Advocate for the petitioner.

Mr. J. Mulgaonkar, Advocate for the respondent no.2.

CORAM: MANISH PITALE, J.

Date: 24th JANUARY, 2022

P.C.

1. By this Writ Petition, the petitioners (original plaintiffs) have challenged order dated 22.2.2021, passed by the Court of Civil Judge, Senior Division, at Margao, whereby an application seeking amendment of plaint (Exh. 39) has been rejected.
2. The petitioners filed a suit for declaration and injunction against the respondents herein. Thereafter, the petitioners filed an application seeking amendment of the plaint in order to drop the prayer for declaration. The said application was opposed by the respondents. By the impugned order, the aforesaid Court held that allowing such an amendment would amount to changing the nature of the suit and further that the amendment did not deserve to be

granted because the case of the petitioners is not that of seeking injunction based on claim of simplicitor possession.

3. Mr. Lotlikar, learned Senior Counsel for the petitioners submitted that the approach adopted by the aforesaid Court is wholly unsustainable, for the reason that there is no question of the nature of the suit being fundamentally changed by dropping the prayer for declaration. It is submitted that the petitioners claim to be owners of the property in question and that they have sufficient material to support such a claim. It is submitted that the respondents would not suffer any prejudice if the proposed amendment is allowed. It is further submitted that observations made in the impugned order are not in tune with the correct position of law

4. On the other hand, Mr. Mulgaonkar, learned counsel for the respondent no.2 submitted that the aforesaid Court has recorded in paragraph 8 of the impugned order, as to the manner in which the petitioners appeared to be blowing hot and cold at the same time. It is submitted that since a contention was raised on behalf of the petitioners that even after dropping the prayer for declaration the petitioners could convert the suit into a suit for implied declaration, which was wholly unacceptable, the aforesaid Court was justified in rejecting the application for amendment.

5. This Court has heard learned counsel for the rival parties and perused the record.

6. The suit has been filed by the petitioners for declaration and permanent and mandatory injunction against the respondents. By the amendment application, the petitioners proposed to drop the prayer for declaration. It cannot be said that by seeking to drop the prayer for declaration, the petitioners would be fundamentally changing the nature of the suit. At the most, it could be said that the petitioners would be amending the plaint in the aforesaid manner at their own risk. So long as the petitioners as the plaintiffs are conscious of the risk that they are undertaking while seeking to amend the plaint for dropping the prayer for declaration, it cannot be said that such a prayer deserves to be rejected on the ground that nature of the suit would fundamentally change. There can be no doubt about the fact that when the suit upon such amendments remains only a suit for grant of injunction, the same would be decided in accordance with law, on the basis of the claim of the petitioners as regards their ownership in the property in question. The respondents would not be precluded from contending as to what would be the fall out of amending the plaint in the aforesaid manner by dropping the prayer for declaration.

7. Notwithstanding what was contended on behalf of the petitioners as recorded in paragraph 8 of the impugned order, the aforesaid Court ought to have decided the application by applying the position of law governing amendment of pleadings. This Court is of the opinion that it cannot be said that by dropping the prayer for declaration, the nature of the suit would fundamentally change. Therefore, the impugned order is found to be unsustainable.

8. Accordingly, the writ petition is allowed. The impugned order is quashed and set aside and the application at Exh. 39 filed by the petitioners seeking amendment is allowed in terms of the prayers made therein. The amendment be carried out before the aforesaid Court within three weeks from today. The respondents would be at liberty to carry out such amendment as may be advisable in their pleadings, within three weeks thereafter, in view of the amendment of the plaint. It is made clear that the aforesaid Court shall now proceed in the matter, strictly in accordance with law governing the suit praying for simplicitor injunction.

9. Writ Petition is disposed of accordingly.

MANISH PITALE J.