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IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NOS. 373, 374, 375, 376, 377, 378, 379
AND 2101 (FILING) OF 2021

WRIT PETITION NO. 373 OF 2021

1. Pundalik Pagi & anr. Petitioners

V e r s u s

Comunidade of Agonda,
Rep. By its Attorney Darshan
P Naik Gaonkar & 3 Ors. Respondents

WRIT PETITION NO. 374 OF 2021

1. Usha Pagi & anr. Petitioners

V e r s u s

Comunidade of Agonda,
Rep. By its Attorney Darshan
P Naik Gaonkar & 3 Ors. Respondents

WRIT PETITION NO. 375 OF 2021

Suresh Pagi Petitioner

V e r s u s

Comunidade of Agonda,
Rep. By its Attorney Darshan
P Naik Gaonkar & 3 Ors. Respondents

WRIT PETITION NO. 376 OF 2021

Samir Ashok Pagi Petitioner

V e r s u s

Comunidade of Agonda,
Rep. By its Attorney Darshan
P Naik Gaonkar & 3 Ors. Respondents

WRIT PETITION NO. 377 OF 2021

Mahesh Pagi & anr. Petitioners

V e r s u s

Comunidade of Agonda,
Rep. By its Attorney Darshan
P Naik Gaonkar & 3 Ors. Respondents

WRIT PETITION NO. 378 OF 2021

Sulbha Gokuldas Pagi Petitioner

V e r s u s

Comunidade of Agonda,
Rep. By its Attorney Darshan
P Naik Gaonkar & 3 Ors. Respondents

WRIT PETITION NO. 379 OF 2021

Satendra Pagi, Rep. By
POA, Sanjivani Pagi Petitioner

V e r s u s

Comunidade of Agonda,
Rep. By its Attorney Darshan
P Naik Gaonkar & 3 Ors. Respondents

A N D

WRIT PETITION NO. 2101 OF 2021 (FILING)

1. Ramesh Pagi and anr. Petitioners

V e r s u s

Comunidade of Agonda,
Rep. By its Attorney Darshan
P Naik Gaonkar & 3 Ors. Respondents

Mr. Shivan Desai, Advocate with Ms. Maria Cotta
Viegas, Advocate for the Petitioners.
Mr. Rohan Rama Desai, Advocate for the respondent
nos. 3 and 4.

CORAM:	MANISH PITALE, J
Reserved on:	10th February, 2022
Pronounced on:	22nd February, 2022.

ORDER

1. These petitions have been filed by original plaintiffs challenging orders passed by the Court of Civil Judge, Junior Division, Canacona (trial Court), whereby applications filed by the respondent nos. 3 and 4 in these Writ Petitions have been allowed and the said respondents have been directed to be added as defendants in the suits. According to the petitioners, the trial Court erred in passing the impugned orders and that the principles governing Order 1 Rule 10(2) of Code of Civil Procedure (CPC), were not applied in the correct perspective by the trial Court.

2. The petitioners before this Court filed suits against respondent nos.1 and 2 in these Writ Petitions, for declaration and consequential reliefs. The petitioners claim that they deserve to be declared as owners in possession of the suit properties and the respondent nos.1 and 2, being the original defendants, deserve to be restrained permanently from disturbing the possession of the petitioners in the property in question.

3. During the pendency of the suits, the respondent nos. 3 and 4 in these Writ Petitions filed applications for intervention and for being added as defendants in the suits. Being components or members of the respondent no.1-Communidade of Agonda, they

claimed that the said Comunidade was not defending the suits properly and the petitioners who were allegedly rank encroachers were likely to succeed in the suits. The respondent nos. 3 and 4 placed before the trial Court the fact that they had been agitating against the alleged encroachments of the Comunidade property by the petitioners and despite the fact that the respondent no.1 Comunidade was expected to take necessary steps for protection of the property, proper steps were not being taken. The respondent nos. 3 and 4 had submitted number of complaints before the respondent no. 2, the Administrator of Comunidades, but when no action was forthcoming, the respondent nos. 3 and 4 along with other components of the Comunidade had filed Writ Petition (Stamp Number Main No. 1202 of 2020) before this Court. By order dated 5.4.2021, the aforesaid Writ Petition was disposed of by recording that the respondent no.2-Administrator of Comunidades would take appropriate decision in the proceedings initiated against the petitioners and others for alleged encroachments of the property of the Comunidade.

4. According to the respondent nos. 3 and 4 they were required to be arrayed as defendants in the suits because Written Statements filed on behalf of the respondent no.1/Comunidade through the attorney were not effective and there was every possibility of the Comunidade conceding before the trial court, as a consequence of which the petitioners would gain legal status and rights in plots illegally demarcated in the property belonging to the respondent no.1 Comunidade. Many of the alleged shortcomings on the part of the respondent no.1 Comunidade

and its attorney were highlighted before the trial Court. The said applications filed in the suits were opposed by the petitioners as well as the respondent no.1 Comunidade.

5. But, by the impugned order, the trial Court allowed the applications, holding that presence of the respondent no.3 and 4 as defendants in the said suits was necessary for effectively deciding the issues that would arise for adjudication in the said suits.

6. Aggrieved by the aforesaid orders passed by the trial Court, the petitioners filed the present Writ Petitions in which notices were issued and the respondents entered appearance. The Writ Petitions were heard finally.

7. Mr. Shivan Desai, learned Counsel appearing for the petitioners in these Writ Petitions submitted that while passing the impugned orders the trial Court had wrongly applied the principles governing exercise of power by the Court under Order 1 Rule 10(2) of the CPC, concerning addition of parties. It was submitted that respondent nos. 3 and 4 in these Writ Petitions were neither necessary nor proper parties. Merely because respondent nos. 3 and 4 as components of the Comunidade were dissatisfied with the manner in which the litigation was being handled by the Comunidade and its attorney, it would not give them a right to become parties in the aforesaid suits. If the impugned orders were sustained, flood gates would be opened and various components of the Comunidade would want to be

arrayed as defendants, which would derail the proceedings before the trial Court. It was submitted that the respondent nos. 3 and 4 had no *locus standi* to maintain the said applications.

8. Attention of this Court was invited to various Articles of the Code of Communitade to emphasize that if the respondent nos. 3 and 4 had grievance against the attorney of the Communitade, they could initiate appropriate action against the attorney. It was further submitted that the Written Statements filed on behalf of the respondent no.1 Communitade before the trial Court would show that the reliefs sought in the suits were denied, demonstrating that there was no reason for the respondent nos. 3 and 4 to make a grievance in such circumstances and that they did not deserve to be added as parties to the suits. It was submitted that the petitioners as the plaintiffs were *dominus litus* and that respondent nos. 3 and 4 could not be forced upon the petitioners to be added as defendants in the suits. The learned Counsel for the petitioners placed reliance upon the judgments of the Hon'ble Supreme Court in the case of ***Ramesh Hirachand Kundanmal Vs Municipal Corporation of Greater Bombay and others, (1992) 2 SCC 524; Kasturi Vs Iyyamperumal and others, (2005) 6 SCC 733 and Mumbai International Airport Private Limited Vs Regency Convention Centre and Hotels Private Limited and others, (2010) 7 SCC 417.***

9. On the other hand, Mr. Rohan Rama Dessai, learned Counsel appearing for respondent nos. 3 and 4 submitted that

impugned orders passed by the trial Court were justified in the peculiar facts and circumstances of the present cases. It was submitted that the respondent no.1 Comunidade and its attorney had not only miserably failed to protect the interest of the property of Comunidade but, they were actively conniving with the petitioners so that the suits filed against the Comunidade would stand decreed. It was emphasized that when the respondent no.1 Comunidade and its attorney failed to take appropriate steps against the petitioners who were rank encroachers, the respondent nos.3 and 4 were constrained to file the aforesaid Writ Petition before this Court. It had come on record that the respondent no. 2 Administrator of Comunidades had also not taken swift action in the matter, due to which part of the land of respondent no.1 Comunidade was illegally converted into plots and the petitioners had encroached upon the same. It was further submitted that when the Comunidade and its attorney under the Code of Comunidades did not perform its duties and started acting contrary to the interest of the Comunidade, the respondent nos. 3 and 4 as components of the Comunidade could not be left helpless on the ground that they had no *locus standi* to approach the Court.

10. The learned Counsel submitted that the respondent nos.3 and 4 would place appropriate material on record before the trial Court for effectually and completely adjudicating the questions involved in the suit, thereby showing that the trial Court had correctly exercised power under Order 1 Rule 10(2) of CPC. On the question of *locus standi* of the respondent nos. 3 and 4, the

learned Counsel placed reliance on the judgments of this Court in the cases of ***Mr. Apolinario C. Fernandes and 2 others Vs Mr. Victor Jose P. D'Souza and 5 others, 1990(1) Goa Law Times (91) and Gopal Dattu Pal Vs Administrator of Comunidade of Bardez and others, 2014 (6) ALL MR 125.***

11. Heard learned Counsel for the rival parties and perused the material on record. Since common question arises for consideration in these Writ Petitions, these petitions are being disposed of by this common order.

12. A perusal of the documents on record shows that the petitioners in the present petitions are the original plaintiffs seeking declaration from the trial Court about being owners in possession of plots of land, allegedly located in the property of respondent no.1 Comunidade. They have also sought a permanent injunction against respondent no.1 Comunidade from interfering with their possession in the suit plots. The respondent no.1 Comunidade, being the defendant is expected to place the correct position on facts before the Trial Court and to contest the suit filed by the petitioners.

13. To properly appreciate the rival contentions, it is necessary to appreciate the background in which the petitioners have filed the aforesaid suits. It appears that an extraordinary general body meeting of the Comunidade was held on the question of encroachments in the property of Comunidade and it was

unanimously resolved that action ought to be taken against such encroachers. Despite the unanimous decision of the General Body of the Comunidade, no action was apparently being taken, as a result of which, the components of the Comunidade including respondent nos. 3 and 4 herein sent letters to the respondent no.2 Administrator of Comunidades to take appropriate action in the matter.

14. When the components of the Comunidade, including respondent nos. 3 and 4 herein, were not satisfied as appropriate action was not being taken by the respondent no.2 Administrator of Comunidades, they filed Writ Petition (Stamp Number Main No. 1202 of 2020) before this Court. The respondent nos. 3 and 4 and other petitioners before this Court placed google images on record to show that while the property of Comunidade was not encroached in the year 2009, in a couple of years the said property was showing plots illegally demarcated wherein outsiders had taken possession. During pendency of the aforesaid Writ Petition before this Court, it was noted that the respondent no.2 Administrator of Comunidades had started issuing notices to the alleged encroachers and proceedings were pending. In this backdrop, the Writ Petition stood disposed of with a direction to the Administrator of Comunidades to decide the representation submitted by the respondent nos. 3 and 4 and other components of the Comunidade.

15. The documents placed on record also show that even the respondent no.2 Administrator of Comunidades had noticed

that the respondent no.1 Comunidade and its attorney were not taking appropriate action in the matter. A note dated 13.10.2020 of the Administrator of Comunidades shows that the said office recorded the lack of interest shown by the Comunidade and its attorney in protecting the interest and the property belonging to the Comunidade. It was noted that the attorney of the Comunidade was not taking appropriate steps for protecting the interest of the Comunidade and hence, a detailed inquiry was recommended against the Comunidade by appointment of an independent officer.

16. A perusal of the Written Statements filed on behalf of the respondent no.1 Comunidade in the suits filed by the petitioners shows that while the written statements do seek dismissal of the suits, there are certain admissions made in the Written Statements, which may accrue to the benefit of the petitioners. It becomes apparent that the respondent no.1 Comunidade and its attorney failed to take into account the material produced and made available by respondent nos.3 and 4 to indicate the nature of possession of the petitioners in the plots in question, which could throw light on the aspect as to whether the petitioners can be said to be encroachers and as to whether they have any right to continue in possession of the plots located in the property of the respondent no.1 Comunidade.

17. The learned Counsel appearing for the petitioners has placed much emphasis on various Articles of Code of Comunidades, particularly the Articles pertaining to powers of the Comunidade

and its Attorney, to contend that if respondent nos. 3 and 4 as components of the Comunidade had any grievance against the Comunidade or the attorney, they were not helpless and that they could insist upon appropriate action being taken in terms of Code of Comunidades. It was submitted that the respondent nos. 3 and 4 did not take any such steps and instead filed applications for being arrayed as defendants in the aforesaid suits. The question of *locus standi* of respondent nos. 3 and 4 was also raised, on the basis that it was for the respondent no.1 Comunidade to protect the interest of the properties belonging to the Comunidade.

18. In this backdrop, considering the point of *locus standi* raised on behalf of the petitioners, it becomes necessary to refer to judgments of this Court in the case of **Mr. Apolinario C. Fernandes and 2 others Vs. Mr. Victor Jose P. DSouza and 5 others**(supra) and **Gopal Dattu Pal Vs Administrator of Comunidade of Bardez and others** (supra). By referring to the Code of Comunidades, this Court in the case of **Mr. Apolinario C. Fernandes and 2 others Vs. Mr. Victor Jose P. DSouza and 5 others**(supra) held that the components of the Comunidade like the respondent nos. 3 and 4 herein share profits and losses of the Comunidade and therefore, they are certainly affected parties and they have a personal interest in the Comunidade and its properties, including the manner in which the properties are administered. In a situation where the Comunidade was not acting in an appropriate manner to safeguard the interest of the

Comunidade, this Court held that the components or members of the Comunidade will not be helpless. They certainly had the *locus standi* to raise a grievance in the matter. In the said case the question was, as to whether such components or members of the Comunidade could file a suit and whether they had *locus standi*, considering that it was for Comunidade to initiate appropriate legal action. This Court upon analysis of various provisions of the Code of Comunidades held that even individual components or members of the Comunidade certainly had *locus standi* to proceed in such a situation.

19. Similarly, in the case of ***Gopal Dattu Pal Vs Administrator of Comunidade of Bardez and others***(supra), this Court reiterated the aforesaid position of law laid down by this Court regarding *locus standi* of the components or members of the Comunidade, in the said judgment in the case of ***Mr. Apolinario C. Fernandes and 2 others Vs. Mr. Victor Jose P. DSouza and 5 others***(supra). It was held that such components or members certainly had a right to independently maintain a suit to canvas the grievance pertaining to the Comunidade or its interest.

20. The learned Counsel appearing for the petitioners sought to distinguish the aforesaid judgments by saying that components or members of Comunidade may, in a given set of circumstances, have *locus standi* to file suits, but they could not be said to have *locus standi* to be added as defendants in a suit filed against the Comunidade. This Court is unable to appreciate the aforesaid

contention raised on behalf of the petitioners. If the Comunidade and its attorney are unable to or deliberately refuse to take care of interest of the Comunidade and its properties, components or members like respondent nos. 3 and 4 herein, who have an interest in the Comunidade and its properties, could certainly come forward to defend the legal proceedings initiated against the Comunidade.

21. At this stage, it was emphasized by the learned counsel appearing for the petitioners that the respondent nos. 3 and 4 could not be added as parties by applying the principles of Order 1 Rule 10(2) of CPC. The judgments on which reliance was placed in this context cannot assist the petitioners in demonstrating any error committed by the trial Court in the present cases. In the case of ***Ramesh Hirachand Kunanmal Vs. Municipal Corporation of Greater Bombay and others*** (supra) it was laid down that a person can be added as a party if he is directly or legally interested in the legal action and he can say that the litigation may lead to a result which will affect him legally, i.e. by curtailing his legal rights. It was laid down that under the aforesaid Rule a person cannot insist upon being joined as a defendant when his object is to prosecute his own cause of action. In the present case, as noted above, the respondent nos. 3 and 4 as components or members of the Comunidade would certainly be affected by the proceedings in the suits filed by the petitioners. It cannot be said that they desire to be added as defendants with an object to prosecute their own cause of action. Therefore, the aforesaid judgment cannot be of any assistance to the petitioner.

22. In the case of ***Kasturi Vs Iyyamperumal and others***(supra), the Hon'ble Supreme Court deliberated upon the concept of proper parties and necessary parties, in the context of a suit for specific performance and examined as to whether certain persons could be made parties to a suit. In the case of ***Mumbai International Airport Private Limited Vs. Regency Convention and Hotels Private Limited and others***(supra), the Hon'ble Supreme Court held that the trial Court while exercising discretion under Order 1 Rule 10(2) of the CPC has to act according to reason and fair play and not according to whims and caprice. Applying the said position of law to the facts of the present case, it is found that no error can be attributed to the trial Court in allowing the applications filed by the respondent nos. 3 and 4 to be added as defendants in the suits.

23. The material on record shows that respondent nos. 3 and 4 along with other components and members of the Comunidade have been consistently agitating the issue of encroachments in the property of the Comunidade and the need to take precipitate action against the encroachers. There is material to show that even the respondent no.2 Administrator of Comunidades has found that the Comunidade and its attorney have failed to take care of interest of the Comunidade and its properties. In fact, action is recommended against the Comunidade for such failure. In this backdrop, when the petitioners have filed suits seeking declaration of ownership of plots in the properties in question against the respondent no.1 Comunidade, it becomes necessary for the Comunidade to place before the trial Court appropriate

pleadings and material to protect the interest of the Comunidade and its properties.

24. A perusal of the Written statements filed in the suits shows that there is no reference to the material on the basis of which the respondent nos. 3 and 4 have been raising grievance before the respondent no.2 Administrator of Comunidades and in the aforesaid Writ Petition filed before this Court. Written statements do state that the suits deserve to be dismissed, but the contest raised on behalf of the respondent no.1 Comunidade, *prima facie*, leaves a lot to be desired. There cannot be any dispute about the fact that under the Code of Comunidades the respondent nos. 3 and 4, as its components and members do have an interest in the rights and properties of the Comunidade. The result of the suits filed by the petitioners will have a direct impact on the interest of respondent nos. 3 and 4 and therefore, it cannot be said that their presence before the trial Court in the aforesaid suits cannot be countenanced.

25. The petitioners are not justified in contending that if the respondent nos. 3 and 4 are permitted to be added as the defendants, any and every component or member of the Comunidade would come forward and the process would derail the proceedings before the trial Court. This Court is not inclined to accept the aforesaid contention, for the reason that the respondent nos. 3 and 4 have placed on record sufficient material before the trial Court to show why their presence is necessary for effectually and completely adjudicating upon the questions involved in the

suit. The power under order 1 Rule 10(2) of CPC has to be seen not just from the point of view of the contesting parties, but emphasis has to be on the approach that the Court may adopt at any stage of the proceedings even without an application by any party, as regards addition of parties in the proceedings for effectually and completely deciding the questions involved in the suit. The trial Court in the present case, in the facts and circumstances brought before it, has come to a correct conclusion that presence of the respondent nos.3 and 4 is necessary for effectually and completely deciding the questions involved in the suits and this Court is of the opinion that the view adopted by the trial Court does not deserve interference.

26. Ultimately, it is for the Court to decide the truth of the matter based on appropriate material brought before it. The Court has a discretion to strike out or add parties in this quest for truth and for rendering justice between the parties. The question of *locus standi* of respondent nos. 3 and 4 is completely answered by the aforesaid judgments of this Court on which the learned counsel for respondent nos. 3 and 4 has placed reliance. Therefore, it becomes evident that the petitioners cannot claim that since they are *dominus litus*, it is their choice as to who is to be added as defendants in the suits. In fact, the trial Court has correctly noted that more than the petitioners as *dominus litus*, in the suits, it is the respondent no.1 Comunidade (original defendant no.1), which has vehemently opposed the addition of defendant nos. 3 and 4 as defendants in the suits. This vehement opposition on the part of the respondent no.1 Comunidade

further shows why the presence of the respondent nos. 3 and 4 is necessary before the trial Court for a complete adjudication of the questions involved in the suits.

27. In view of the above, this Court finds that no error can be attributed to the trial Court in passing the impugned orders, whereby the respondent nos. 3 and 4 have been added as defendants in the suits.

28. Accordingly, the Writ Petitions are dismissed. All pending applications, if any, stand disposed of.

MANISH PITALE, J.