

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 510 OF 2022

Esteves Santos Carvalho @ Estevam Santos
Carvalho & anr. ... Petitioners

Versus

State of Goa, Thr. Chief Executive & 12 Ors. ... Respondents

Mr. Jatin Ramaiya, Advocate *for the Petitioners.*

Ms. Sulekha Kamat, Additional Government Advocate *for the
Respondent nos. 1 to 5.*

Mr. Tarzan D'Costa, Advocate *appearing in person-Respondent
no.7-Defendant no.7.*

CORAM: G. S. KULKARNI, J.
DATED: 16th November, 2022

P.C.

1. I have heard the learned Counsel for the petitioners-plaintiffs and learned Additional Government Advocate for the respondent nos. 1 to 5. Respondent no.6 is the Talathi of Village Sancoale who is supposed to be represented by the learned Additional Government Advocate, however, she states that she has not received any instructions. Respondent no.7-defendant no.7, has appeared in person. Respondent no.8 has adopted the written statement of respondent no.7, she has also appeared before the Trial Court,

however, she is not represented in the present proceedings. Respondent nos. 9 to 13 are not appearing even before the Trial Court as also are not represented in the present proceedings. Respondent nos. 7 to 13 are all part of the same family and are related to each other.

2. The challenge in the present Writ Petition is to an order dated 23 September, 2022, passed by the learned District Judge-1, South Goa, Margao, whereby an application filed by the petitioners-plaintiffs under Order VI, Rule 17 of the Code of Civil Procedure (CPC), praying for amendment of the plaint, in the proceedings of the Civil Suit No. 64 of 2015, has been rejected.

3. The dispute in the suit concerns a property as described in paragraphs 4 and 5 of the plaint namely survey no.132/2 of Village Sancoale, District South Goa. It is the case of the plaintiffs that they are exclusive owners in possession as also possess title to the suit property. On the other hand, it is the case of the private defendants that they have the rights in respect of the said property claiming that these defendants were in possession. There were proceedings before the Revenue authorities in regard to the change in the entries in Form III and Form I/XIV. There is some history to such proceedings,

however, as on date, it is not in dispute that an inquiry in that regard on appropriate entries to be carried out in the Revenue records are pending before the Deputy Collector.

4. Be that as it may, the present suit was filed by the petitioners-plaintiffs on 4 May, 2015, praying for the following reliefs :

“(i) For Judgment and Decree, that the said raft Index of Land relating to survey no. 132/2 of village of Sancoale, Taluka Mormugao was correctly done in the name of the plaintiff no. 1 and that its change and/or alteration with recording the said name 'Argentina Cruz Carvalho', was fraudulent entry, upon deletion of existing name of plaintiff no.,1 and then accordingly order correction of the form no.I and XIV.

AND/ALTERNATIVELY

b) Without prejudice in abundant caution ought to grant declaration that the said property', under survey no. 132/2 is owned and possessed by the plaintiffs.

c) The plaintiffs pray for temporary injunction that till the disposal of the suit, that the form No. I and XIV of said survey no. 132/2 of village of Sancoale, Taluka Mormugao shall not be

interfered with in any form and same time staying the proceedings before the Defendant no. 3, who ought to be directed alongwith defendant no.2 and 4, to preserve the records of the matter with them.

d) For any other relief deem fit in the circumstances of the case.

e) For costs.”

5. In the suit in question, there were interim proceedings inasmuch as an application under Order VII Rule 11 of the CPC came to be filed by the private defendants which came to be rejected, the proceedings in that regard had also reached this Court in a Civil Revision Application (Re: Civil Revision Application No. 2489 of 2021-F), which came to be disposed of in terms of the order dated 4 April, 2022, passed by a coordinate Bench of this Court.

6. In due regard to the relevant developments subsequent to the filing of the suit and considering the ambit of the suit, the petitioners–plaintiffs moved an application in question under Order VI Rule 17 of the CPC praying for amendment of the plaint. The application is annexed to the present proceedings at Annexure A-10 (page 151). The said amendment application was opposed by respondent no.7.

The Trial Court after hearing the parties has rejected the said amendment application by the impugned order. It is on this backdrop the proceedings are before the Court today.

7. Having extensively heard the learned Counsel for the petitioners, the learned Additional Government Advocate and the contesting respondent no.7, and considering what has transpired before the Court, further adjudication of the petition is not called for, the reason being that respondent no.7 has stated that his primary concern was to the effect that paragraph 22 of the plaint as it stands, ought not to have been disturbed by the petitioners–plaintiffs in the proposed amendments, as, according to him, it bears an admission of the petitioners–plaintiffs on the issue of limitation. Responding to such contention as urged by the respondent no.7–defendant no.7, learned Counsel for the petitioner, on instructions, has fairly stated that if rest of the amendment as prayed for is allowed without disturbing paragraph 22 of the plaint as it stands, his client would not have any objection to maintain paragraph 22 as it stands.

8. In this view of the matter, respondent no.7 has also taken a fair stand that the impugned order by consent can be set aside by permitting the petitioners–plaintiffs to move a fresh amendment

application which can be decided expeditiously. In this view of the matter, the petition can be disposed of by the following order :

ORDER

(i) The impugned order dated 23 September, 2022 passed by the learned District Judge-1, by the consent of the parties, is set aside.

(ii) The statement as made on behalf of the petitioners-plaintiffs at paragraph 22 of the plaint shall not amended, stands accepted.

(iii) The petitioners-plaintiffs are permitted to file a fresh application praying for amendment of the plaint which be filed within a period of two weeks from today.

(iv) Let any reply to the said amendment application be filed within one week of the same being filed and served on the defendant nos. 7 and 8, who are the only contesting defendants.

(v) After the pleadings on such application are complete, let the amendment application be decided by the Trial Court, strictly in accordance with law after hearing the parties. Orders thereon be passed within a period of two months from the pleadings of the said application being complete.

(vi) The parties are directed to cooperate in the early disposal of such amendment application.

(vii) All contentions of the parties are expressly kept open.

9. Needless to observe, that if any other defendants decide to file a reply to the amendment application, they are free to do so.

10. Petition stands disposed of in the above terms. No costs.

G. S. KULKARNI, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
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