

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 801 OF 2019

SHAKUNTALA PRABHAKAR NAIK @
SHOBA SANGTU DEVIDAS @ BAYU
SANGTU DEVIDAS AND ANR., ...PETITIONERS
VS
RUPA PRASAD AMONKAR & 11 ORS., ...RESPONDENTS

Mr. Manoj Jalmi, Advocate *for the Petitioners.*

CORAM: MANISH PITALE, J.

DATED: 26th February 2022

P.C.:

1. By this Writ Petition, the petitioners (original plaintiffs) have challenged order dated 30.07.2019, passed by the Court of Civil Judge Junior Division, Canacona (hereinafter referred to as the Trial Court), whereby the Application for amendment filed on behalf of the petitioners (Exhibit D-29) has been partly allowed.
2. The petitioners have been permitted to incorporate paragraphs 4(a) to 4(e) in the plaint, but, amendment to the extent of seeking deletion of certain statements made in the pleadings at paragraphs 2(a) to 2(c), has been rejected.

3. Mr. Manoj Jalmi, learned Counsel appearing for the petitioners submitted that a perusal of the statements made in the plaint at paragraphs 2(a) to 2(c), when appreciated in the context of the response thereto, in the written statement of defendant nos. 5 and 6 and the written statement of defendant nos. 9, 10, 11, and 12, would show that the identity, as well as the boundaries of the property, were admitted and only the statements regarding matrix numbers stated in paragraphs 2(a) to 2(c) in the plaint were disputed. By the amendment, the petitioners sought to delete reference to the matrix numbers in paragraphs 2(a) to 2(c). According to the learned Counsel for the petitioners, the Trial Court erred in rejecting the amendment to the extent of seeking deletion of reference to the matrix numbers in paragraphs 2(a) to 2(c) of the plaint on the ground that the petitioners could not be allowed to take away admissions.

4. Upon notice being issued in the present Writ Petition, the respondents were served. This Court adjourned the Petition on 10.01.2022 in order to give a last chance to the respondents to appear before this Court. Thereafter, this Petition was listed on 28.01.2022, when again, the respondents failed to appear before this Court despite service.

5. Today, when the Petition was called out for hearing, Mr. Manoj Jalmi was ready for arguments, but, there was no appearance on behalf of the respondents.

6. In view of the above, the learned Counsel appearing for the petitioners was heard in the matter.

7. A perusal of the plaint, in the present case, shows that the petitioners have filed a suit for declaration and other consequential reliefs against the respondents. The parties are related to each other. In paragraphs 2(a) to 2(c) of the plaint, the petitioners have given the description of the suit properties, stating the survey numbers, where the properties are located as well as the boundaries and area of such properties. There is also reference to matríz numbers in the said paragraphs with reference to the Taluka Revenue Records.

8. A perusal of the written statement filed on behalf of original defendant nos. 5 and 6 shows that the survey numbers stated by the petitioners in the plaint have been admitted, so also, the boundaries of the properties mentioned in the plaint as per the Revenue Records are admitted to be correct boundaries. But, the said defendants have stated that the assertion on the part of the petitioners that the properties are enrolled in the Taluka Revenue Records under matríz numbers, has been denied.

Similarly, the written statement filed on behalf of defendant nos. 9, 10, 11 and 12 shows that the contents of paragraphs 2(a) to 2(c) of the plaint, in its entirety, have been conceded to be true and correct, except for the matrix numbers.

9. The contents of the aforesaid written statements clearly show that the said defendants have not denied the survey numbers of the properties and the boundaries of the properties as well as the area of the properties. The defendants have only disputed the reference to the matrix numbers on the part of the petitioners in paragraphs 2(a) to 2(c) of the plaint.

10. A perusal of the Application for amendment filed on behalf of the petitioners shows that they wish to delete the reference to such matrix numbers made in paragraphs 2(a) to 2(c) of the plaint. This clearly shows that the petitioners themselves are ready to delete any reference to the matrix numbers, since they are seriously disputed by the defendants in the written statement. In other words, the petitioners do not wish to join issue with regard to that aspect of the matter.

11. In this situation, this Court is unable to understand the reasoning given by the Trial Court while partly rejecting the Application for amendment filed on behalf of the petitioners.

12. The Trial Court has erroneously proceeded to conclude that the deletion of the said portions pertaining to matrix numbers in the paragraphs on behalf of the petitioners, would amount to taking away certain admissions. The nature of the pleadings, particularly, the contents of the aforesaid written statements filed on behalf of the original defendants, show that the aforesaid reasoning adopted by the Trial Court cannot be sustained.

13. In view of the above, the Writ Petition deserves to be allowed in the following terms:

- (a) The Writ Petition is allowed.
- (b) The impugned order dated 30.07.2019 is quashed and set aside, to the extent that it partly disallows the amendment sought on behalf of the petitioners by only partly allowing the Application for amendment (Exhibit D-29).
- (c) Consequently, the Application for amendment (Exhibit D-29), filed on behalf of the petitioners stands allowed in its entirety in terms of the prayers made in the said Application.
- (d) The petitioners shall now carry out the amendment in pursuance of the order passed by this Court, within two weeks before the Trial Court.

14. The Petition stands disposed of.

MANISH PITALE, J.