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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 329 OF 2021

Mr. Suvarn Rajaram Bandekar, son of late
Rajaram N. Bandekar, major of age,
Industrialist, age about 57 years, residing
at “Raj Tara”, F.L. Gomes Road, Vasco da
Gama, Goa.

... PETITIONER

Versus

1. Mr. Armando Cardozo, since deceased
through his Legal Representatives:

(a) Maria Leticia Cardozo, Major of age,

(b) Mrs. Audrey Cardozo Fernandes, Major
of age,

(c) Mr. James Sebastiao, Major of age,

(d) Mr. Jovek Cardozo, Major of age,

(e) Miss Sheweta Cardozo, Major of age,

(f) Miss Sunifer Cardozo, Major of age,

All residing at House No. 107, Ambexir,
Sernabatim, Salcete, Goa.

... RESPONDENTS

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Vilas
Pavithran, Advocate for the Petitioner.

Mr. Parag Rao with Mr. Akhil Parrikar, Advocates for
Respondent Nos. 1(a) and 1(d).

CORAM:

B.P. DESHPANDE, J.

RESERVED ON:

5th OCTOBER 2023

PRONOUNCED ON:

12th OCTOBER 2023

JUDGMENT:

1. Heard Mr. J.E. Coelho Pereira, learned Senior Counsel who appears along with Mr. Vilas Pavithran for the Petitioner and Mr. Parag Rao appearing along with Mr. Akhil Parrikar for Respondent Nos. 1(a) and 1(d).

2. Rule. Rule made returnable forthwith. Heard the matter finally at the stage of admission.

3. The Petitioner/Plaintiff being aggrieved by the impugned order dated 11.12.2020 passed by the learned Civil Judge Junior Division, Margao, preferred the present Petition under Article 227 of the Constitution of India.

4. The learned Senior Counsel Mr. J.E. Coelho Pereira appearing for the Petitioner strongly contended that the learned Trial Court failed to consider that the entire amendment sought to be incorporated in the plaint consists of subsequent events and subsequent material particulars in order to effectively decide the suit. He would submit that by partly allowing such amendment, the learned Trial Court failed to decide it judiciously and

therefore, interference under Article 227 of the Constitution of India by this Court is warranted.

5. Mr. Pereira would then submit that some of the paragraphs of the proposed amendment have been rejected, though it contains material particulars in a sequence so as to clearly consider the case of the Plaintiff. He would submit that the discretion exercised by the learned Trial Court while rejecting some paragraphs of the proposed amendment is arbitrary and without applying its mind and therefore, the same is not a judicious decision. He invited the attention of this Court to various paragraphs of the proposed amendment and claimed that the reasons for allowing some paragraphs would also apply to the contents of the paragraphs which are refused to be incorporated in the plaint.

6. Mr. Pereira while relying upon the decision of the Hon'ble Apex Court in the case of **Rajesh Kumar Aggarwal & Others Vs. K.K. Modi & Others, (2006) 4 SCC 385**, would submit that subsequent events are required to be taken into consideration and amendments on such aspects in order to determine the real question in controversy, are required to be

allowed. He further submitted that the primary duty of the Court is to decide whether such an amendment is necessary to decide the real dispute between the parties. At this stage, the Court need not go into the correctness of the proposed amendment. The Court must take note of subsequent events in order to curtail the multiplicity of proceedings.

7. Mr Pereira while placing reliance on the decision of the Apex Court in the case of **Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (D) & Others, (2007) 6 SCC 737**, would submit that the amendment seeking to make the claim more precise, so as to enable the Court to adjudicate more satisfactorily, ought to have been allowed. It is submitted that the Court can compensate the other side by awarding costs.

8. Per contra, Mr. Parag Rao appearing for Respondents Nos. 1(a) and 1(d) claimed that the reasons disclosed by the Trial Court in the impugned order cannot be termed as perverse, illegal or arbitrary so as to interfere with it under Article 227 of the Constitution of India. He would submit that the suit was filed in the year 2010 for simpliciter injunction on the ground that the defendants interfered with the possessory rights of the Plaintiff by

constructing a road. According to him, the limited issue which cropped up in the suit is whether the Plaintiff is entitled to a permanent injunction restraining the Defendants from interfering with the suit property.

9. Mr. Rao would then submit that all the necessary pleadings exist in the original plaint. However, the learned Trial Court while taking the subsequent events, allowed the amendment Application partly, though, some of the paragraphs are found to be the repetition of the earlier paragraphs existing in the plaint. He submitted that the Defendants accepted such an order, even though the proposed amendment allowed by the Trial Court is in fact repetition of a few paragraphs in the plaint.

10. Mr. Rao would then submit that the learned Trial Court took up the exercise of comparing the pleadings in the plaint and the proposed amendment and found that some of the paragraphs are repetition whereas in some paragraphs, the Plaintiff tried to put up arguments and in some paragraphs the Plaintiff tried to discuss the case put forth by the Defendants. According to Mr. Rao, such a procedure is not at all permissible as Order VI of CPC deals with pleadings and not with regard to the arguments or submissions of the parties.

11. Mr. Rao while relying on the decision of the Hon'ble Apex Court in the case of **Surya Dev Rai Vs. Ram Chander Rai & Others, (2003) 6 SCC 675; Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329; Jai Singh & Others Vs. Municipal Corporation of Delhi & Another, (2010) 9 SCC 385 and Radhey Shyam & Another Vs. Chhabi Nath & Others, (2015) 5 SCC 423**, would submit that the powers of this Court under Article 227 of the Constitution are well defined and even if there is some error, which is not found to be gross or patent, the same cannot be interfered with if no injustice is going to be caused. He further submitted that Article 226 of the Constitution would not permit this Court to go into the aspect of interference with the order of the Trial Court.

12. Mr. Rao would then submit that in **Radhey Shyam** (supra), the Apex Court distinguished the scope of jurisdiction under Article 227 and how it is distinct from Article 226. In that matter, the question was whether the view taken in **Surya Dev Rai** (supra), that a writ lies under Article 226 of the Constitution against the order of the Civil Court, is the correct view, was decided by the larger Bench and it was observed in paragraph 21

that an order of the Civil Court could be challenged under Article 227 and not under Article 226 of the Constitution. On that aspect, it was further held by the Apex Court in paragraph 29 that judicial orders of the Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution and the jurisdiction under Article 227 is distinct from jurisdiction under Article 226 of the Constitution. By holding this, the contrary view in **Surya Dev Rai** (supra) was overruled.

13. The rival contentions fall for determination as under:-

14. The Petitioner filed a Suit bearing Regular Civil Suit No. 595 of 2010 against the Defendants for a permanent and mandatory injunction. The main prayer in the plaint is for the grant of permanent injunction restraining the Defendants and/or his agents, servants, representatives and/or family members and/or any person claiming through or under him from in any way interfering and/or trespassing in the suit plot and doing any damage to the suit plot. The prayer clause (B) refers to the grant of mandatory injunction directing the Defendants to remove the mud mortar and rubble stones dumped in the suit plot on the strip of land shown in Plan I. The remaining prayers are for a temporary injunction pending the decision in the suit.

15. The main contention of the Plaintiff is that he is the owner of the part and parcel of Plot No. D-2 admeasuring 11,900 square metres of piece of land surveyed under Survey No. 16/4A and 16/6A of village Sernabatim, Salcete, Goa. The plaint specifically described the entire property and how the Plaintiff acquired rights in it. The Plaintiff claimed that out of the entire property, the area of 11,900 square metres was allotted to him, which he refers to as the suit plot and identified in the plan attached to the plaint. The plaint further shows that on the northern boundary of the suit plot is the property bearing Survey No. 16/7 which is possessed by Defendant No. 1. It further shows that the suit plots consist of Survey Nos. 16/4A and 16/6A as well as the plot in possession of Defendant No. 1 bearing Survey No. 16/7 which consists of three strips of land parallel to each other having Sernabatim Beach/Arabian Sea as its western boundary. It is further contended by the Plaintiff that the suit plots bearing Survey Nos. 16/4A and 16/6A are lying in between Survey No. 16/7 on one side and Survey No. 16/4 on the other side. It is further claimed that the suit plots were earlier consisting of coconut groves but due to the passage of time, the trees on these plots perished. At present, the suit plots are barren and open land on all sides. It is further claimed in paragraph 15 of the plaint

that there are village roads and there exists access to Sernabatim beach by a private road which passes through the said property from south to north and the western side having a width of 6 metres and having a length of 82 metres. The said private road begins from the portion of the suit property which now bears Survey No. 16/4 and which is held by M/s Hermitage Builders Private Limited. The plaint further shows that within the suit plot, the said road had a length of 43 metres, which is depicted in the plan. However, the Defendants constructed illegal structures in his property bearing Survey No. 16/7 and then constructed a compound wall. The Defendants also set up a Bar and Restaurant and a Guest House in his plot within the No Development Zone and somewhere in the year 2010, the Defendants constructed a road in the suit property by opening 8 metres place of the compound wall on the southern side. The Plaintiff claimed that the Defendants constructed such katcha road in the suit property with rubble and mud mortar in order to link it parallel to the existing private road of the Plaintiff.

16. The Defendants filed the written statement and thereafter, the matter was pending before the Trial Court when an Application for amendment of the plaint was filed on 17.01.2020.

This shows that the amendment Application was filed after a period of ten years from the date of the filing of the suit. The Defendants resisted such Application. However, the learned Trial Court by a reasoned order dated 11.12.2020 partly allowed the said Application thereby permitting the Plaintiff to add paragraphs 7A, 12A, 15A, 15B, 15D, 17A, 30T and 30V. The remaining proposed amendment was rejected on the ground that some paragraphs are repetition whereas some paragraphs contain submissions and also counters the case put forth by the Defendants. The learned Trial Court considered the provisions of Order VI Rule 2 of CPC and also referred to the decision in the case of **Revajeetu Builders and Developers Vs. Narayanaswamy & Sons & Others, (2009) 10 SCC 84.**

17. Mr. Pereira while arguing the matter, practically read out all paragraphs of the proposed amendment Application in order to project the contentions that such pleadings are necessary being subsequent events.

18. In order to consider the contentions raised by the learned Senior Counsel, the provisions of Order VI Rule 2 of the CPC are required to be kept in mind, which reads thus:

“2. Pleading to state material facts and not evidence.-

(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.”

19. The purpose of quoting the above provision is to read as to how the proposed amendment of the Petitioner/Plaintiff and more specifically, the paragraphs which were rejected by the Trial Court are found to be contrary to it. It is mentioned that every pleading shall contain only a statement in a concise form of material facts on which parties rely on such claims and that it should not contain evidence that the parties are supposed to prove it.

20. While reading the proposed amendment, the learned Senior Counsel Mr. Pereira has clearly admitted that the paragraphs

allowed by the Trial Court consist of material facts. However, he claims that the paragraphs which are rejected by the Trial Court also consist only of material facts in concise form.

21. Though it is not necessary for this Court to go into the aspect as to whether the paragraphs rejected by the Trial Court are in accordance with Order VI Rule 2 of CPC, the learned Senior Counsel insisted upon it while arguing the matter on each and every paragraph of the proposed amendment. While doing so, it has been clearly observed that the proposed amendment in paragraph 15C is with respect to some documents received by Plaintiff on the basis of RTI Application in the year 2018 and that such proposed amendment is not relevant for deciding the real controversy in the matter.

22. Paragraphs 17B and 17C are again with regard to illegal structure in the property of the Defendants which are not necessarily required to be gone into. Some of the aspects in these paragraphs are already found in the plaint. Similarly, paragraphs 29A, 29B, 29C and 29D are in connection with action taken by the GCZMA Authorities and the inspection carried out with regard to such plots. The Plaintiff in the original plaint also mentioned that

M/s Hermitage Builders Private Limited filed a suit against the Defendants which is clearly a separate matter.

23. While dealing with these aspects, the impugned order shows that the learned Trial Court has gone threadbare into the proposed amendment and found that by way of the Application for amendment, the Plaintiff is seeking to add 35 paragraphs to the main plaint. It is further observed by the Trial Court that the proposed amendment in various paragraphs [as found in paragraph 10 of the impugned order] are of events that occurred after the suit was filed. The learned Trial Court further observed that on earlier occasions the Plaintiff filed four Applications for amendment which were all granted. However, in the present Application, Plaintiff did not disclose any reasons as to why amendments were not made earlier. It is further observed that the plaint as well as the earlier amendment Application allowed by the Trial Court show the necessary pleadings and various paragraphs in the proposed amendment are only found to be repetition. Thus, the observations of the learned Trial Court clearly show that discretion has been exercised by considering each and every paragraph of the proposed amendment. The observation that such amendments are the repetition of the

earlier pleadings and some are not required to decide the real dispute between the parties is found to be justifiable. Some of the paragraphs are clearly found to be the submissions and/or evidence by which the Plaintiff wants to prove his case. Admittedly, the pleadings must contain only the material facts and not the evidence through which the Plaintiff wants to prove its case.

24. The learned Trial Court even considered the factors to be taken into account while dealing with an Application for amendment as laid down by the Apex Court in the case of **Revajeetu Builders and Developers** (supra) which are found in paragraph 19 of the impugned order.

25. In the case of **Jai Singh** (supra) the Apex Court while considering the powers of Article 227 of the Constitution observed that though the Trial Court has jurisdiction to ensure that all subordinate Courts as well as statutory or quasi-judicial Tribunals, exercise the powers vested in them within the bounds of their Authority and that they act in accordance with the well-established principles of law, such power of the High Court which is greater, must be exercised with care and caution. While

exercising such wide powers, it is not expected by the High Court to correct all errors of judgment of the Court or Tribunal, acting within its limit. Such jurisdiction can be exercised only in cases where the orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The Apex Court further observed that the High Court cannot lightly or liberally act as an Appellate Court and re-appreciate the evidence. It cannot substitute its own view for the conclusions reached by the Courts below or the statutory/ quasi-judicial Tribunals. Such power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes.

26. In the case of **Shalini Shyam Shetty** (supra), the Apex Court after analyzing the earlier decisions in consideration with the principles on the exercise of the High Court's jurisdiction under Article 227 of the Constitution, formulated the following points:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts

subordinate to it, “within the bounds of their authority”.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) *It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.*

(k) *The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.*

(l) *On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.*

(m) *The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.*

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.

27. The observations of the Apex Court in the case of **Surya Dev Rai** (supra) and more particularly in paragraph 38(3) regarding Article 226 of the Constitution qua the orders of the subordinate Court have been overruled by the larger Bench in the case of **Radhey Shyam** (supra). Thus, the only provision which is required to be considered in the present Petition is Article 227 of the Constitution while dealing with the impugned order.

28. In **Shalini Shyam Shetty** (supra) and as quoted above, it has been observed that such powers of superintendence cannot be exercised to substitute the conclusion with that of the Trial Court to correct mere errors of law or fact specifically where there is no

patent perversity or manifest failure of justice or even violation of principles of natural justice.

29. The contentions raised by Mr. Rao with regard to the impugned order need to be accepted. The observations of the learned Trial Court that some of the paragraphs of the proposed amendment are only repetitions of the pleadings which are in the plaint are found to be correct. Similarly, some of the paragraphs of the proposed amendment are not even relevant for deciding the controversy between the parties as the suit is a simpliciter for an injunction. The purpose of Order VI Rule 2 of the CPC is to keep a check on the pleadings and ultimately to restrict the evidence that the parties would be leading at the trial. If the pleadings contain only a statement in concise form of material facts on which the parties rely to prove a claim, the Court will be able to curtail such parties in producing evidence which is not necessary for the purpose of deciding such a claim. If unnecessary pleadings are allowed, it would give rise to allowing the amendment on record, which in fact is not necessary to decide the main dispute. Thus, though the proposed amendment was partly allowed which at some places was found to be repetition, the Trial Court has in fact allowed the Plaintiff to bring on record additional pleadings

that too on the fifth occasion. The part of the proposed amendment rejected by the Trial Court needs no interference as the impugned order cannot be termed as perverse or illegal. No prejudice is going to be caused to the Plaintiff in the present matter as sufficient pleadings are on record.

30. Thus, the impugned order needs no interference and accordingly, the Petition must fail.

31. Hence, the following order is passed:

O R D E R

- (a) Writ Petition stands rejected.
- (b) Parties shall bear their own costs.

32. The Petition stands disposed of.

B.P. DESHPANDE, J.