

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 219 OF 2023

Tarzan Da Costa & anr.	... Petitioners
<i>Versus</i>	
Esteves Santos Carvalho & 12 Ors.	...Respondents

Petitioner no.1 present in person.

Mr. Jatin Ramaiya, Advocate *for the Respondent no.1.*

CORAM: M. S. KARNIK, J
DATED: 21st JUNE 2023

ORAL ORDER

1. Heard learned counsel for the petitioner.

2. The challenge to this petition is to the order dated 19.01.2023 passed by the Adhoc District Judge-1, FTC-I, South Goa, Margao, allowing an application for amendment with cost. The trial Court passed an order that the amendment will take effect from the date of filing of the application and shall not date back to the filing of the suit.

3. The petitioner appearing in person, while assailing the order passed by the trial Court, submitted that the entire endeavor of the plaintiffs in filing the application was to defeat the application made by the petitioner-original defendant under Order VII Rule 11 of Civil Procedure Code (CPC). It is contended that the suit was filed on

04.05.2015 based on a cause of action pertaining to fraudulent entries in the revenue records as of 03.03.1993, which is the date of cause of action for the suit. Subsequent thereto, in the proceedings before the revenue authorities, there were some orders passed in respect of reversion of survey records and, accordingly, on the basis of the cause of action that arose on 09.04.2015 and 16.11.2015, which was the date of reversion in the survey record, the plaintiff filed an application for amendment based on this cause of action. It is the contention of the petitioner appearing in person that the application for amendment seeks inclusion of new two causes of action which have arisen post the filing of the suit. It is his submission that such amendment cannot be permitted. It is further submitted that the amendment is sought only for bringing the suit within limitation. It is further submitted that having noticed that the suit is completely barred by limitation, in an ingenious way, an amendment is sought incorporating two new causes of action only for the purpose of defeating the rights of the petitioners. It is further submitted that as on the date of the filing of the application for amendment, the application made by the petitioners under Order VII Rule 11 of CPC was pending and that should have been decided first in point of time. It is thus submitted that as a result of the amendment, the entire nature of the suit is being changed. In support of his contentions, the petitioners relied upon several decisions which are as follows :

(i) Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swani & Ors. AIR 2007 SC 1663

(ii) Daya Singh & anr. vs. Gurdev Singh (Dead) by Lrs. & Ors. (2010) 2 SCC 194

(iii) Md. Akhtar Hossain vs. Suresh Singh & ors. AIR 2004 Calcutta 99

(iv) Sant Ram Agarwal vs. Civil Judge, Mohanlal Ganj – AIR 1994 All 99

(v) Dalip Kaur & anr. vs. Major Singh & Ors. - AIR 1996 P H 107

(vi) Mashyak Grihnirman Sahakari Maryadit Sanstha vs. Usman Habib Dhuka & Ors. - (Civil Appeal No. 3917 of 2013 decided on 18.04.2013)

Extensive submissions were made by the petitioners while assailing the order passed by the trial Court.

4. Learned counsel for the respondent no.1 argued in support of the impugned order.

5. Having considered the submissions and upon going through the materials and perusing the impugned order, I find no reason to interfere with the order passed by the trial Court. In any case, no prejudice is caused to the petitioner as a result of allowing the application for amendment. The trial Court has held that the

proposed amendment does not have the effect of withdrawing any admission made by the plaintiff in the plaint as filed. The cause of action first arose on 03.03.1993. The plaintiffs offered explanation in the plaint as to why the suit was not filed immediately. The trial Court has observed that it is on account of the fact that it is only in the year 2015 when the defendants sought for reversion of the change in the revenue records that the plaintiff considered it a threat to their claim of ownership and thus filed the suit. Further, the trial Court was of the opinion that whether the original plea and the alternative plea makes the suit barred by limitation is a point that has to be considered when the Court decides the application under Order VII Rule 11 of C.P.C. Trial Court observed that it is open for the defendants to contend at the time when they argued the application under Order VII Rule 11 CPC, that the plea is not alternate but is inconsistent and self destructive. This was a pre-trial amendment. The trial Court clarified that paragraph 22A and paragraph 22 B being the proposed amendment, do not have the effect of withdrawal of the admission of the cause of action as contained in paragraph 22 of the plaint. The trial Court was of the opinion that the proposed amendment is not inconsistent and neither does it substitute the original cause of action.

6. At the stage of considering the application for amendment, the trial Court observed that the Court cannot give any findings on

limitation which, prima facie, appeared to it to be a mixed question of law and fact. It is in these circumstances, that the Court observed that the amendment shall take effect from the date of filing of the application. The question of limitation either for the purpose of Order VII Rule 11 of CPC or the trial of the main suit, is kept open.

7. I do not find any reason to interfere with the well reasoned order of the trial court.

8. The petition is rejected. No costs.

M. S. KARNIK, J

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